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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties
due in 1993

Addendum

VENEZUELA 1/

[8 July 1998]

* By decision of the Human Rights Committee, document symbols will henceforth appear in a different form, indicating the State party and the year of submission and number of the report.

1/ For the second periodic report submitted by the Government of Venezuela, see CCPR/C/37/Add.14; for its consideration by the Committee, see CCPR/C/SR.1197 to SR.1199, CCPR/C/79/Add.13 and Official Records of the General Assembly, Forty-sixth session, Supplement nº 40, (A/46/40), paras. 271-310. See also the core document (HRI/CORE/1/Add.3).

The annexes may be consulted in the Secretariat's files.

INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1

1. In Venezuela the President of the Republic and the members of the two Chambers of the National Congress (senators and deputies) are elected every five years. State governors, regional parliaments (known as legislative assemblies of the States), mayors and local councillors are elected every three years. By means of these elections, which are administered by an independent agency - the National Electoral Council - and regulated by the Suffrage and Political Participation Act, the people exercises its sovereignty and takes part in the determination of its political system, the choice of its Government, and its institutional development.

2. In its Constitution (sixth preambular paragraph) the Republic of Venezuela declares its will to live in peace and to cooperate with all the other nations of the world, especially with the republics of the Latin American continent, on the basis of reciprocal respect for the sovereignty and self-determination of peoples, respect for and guarantee of the individual and collective rights of the human person, and repudiation of war, conquest and economic domination as instruments of international policy. In compliance with this statement of its will and as a Member of the United Nations and of the Organization of American States (OAS), Venezuela has undertaken to fulfil, and has in fact fulfilled, the obligations of defending, respecting and ensuring respect for its own self-determination and, in turn, of recognizing and respecting the sovereignty and integrity of other States.

3. The Constitution declares that the aims of the Venezuelan State include: "... maintaining the independence and territorial integrity of the Nation, strengthening its unity, and ensuring the freedom, peace and stability of its institutions"; "... protecting and enhancing labour, upholding human dignity, and promoting the general well-being and social security ... achieving an equitable participation by all in the enjoyment of wealth, according to the principles of social justice, and promoting the development of the economy in the service of man"; and "... supporting the democratic order as the sole and irrenouncable means of guaranteeing the rights and dignity of citizens and favouring their peaceful extension to all the peoples of the earth".

4. Furthermore, the fundamental provisions of the Constitution state that "[t]he Republic of Venezuela is irrevocably and for ever free and independent from any domination or protection by a foreign Power" (art. 1), that it is "[a] federal State on the terms embodied in this Constitution" (art. 2), that its Government "is and always shall be democratic, representative, responsible and alternating" (art. 3), and that "[s]overeignty resides in the people, which exercises it, by means of suffrage, through the branches of the Public Power" (art.4).

5. Various articles of the Constitution state the way in which Venezuela defines and applies the right to self-determination: "The national territory is that which belonged to the Captaincy General of Venezuela before the political transformation initiated by the independence movement in 1810, with the modifications resulting from treaties validly concluded by the Republic"; "The

sovereignty, authority and vigilance over the land area, the territorial sea, the contiguous maritime zone, the continental shelf and the air space, as well as the ownership and exploitation of the property and resources contained therein, shall be exercised by the Republic to the extent and under the conditions established by its laws" (art. 7); "The national territory may never be ceded, transferred or leased, or alienated in any way, even partially or temporarily, to a foreign Power. Foreign States may acquire, within areas previously specified by the Republic, under guarantees of reciprocity and subject to the established limits, only the real property needed for the premises of their diplomatic or consular missions. The acquisition of real property by international organizations may be authorized only in accordance with the conditions and subject to the restrictions established by domestic legislation. In all cases sovereignty over the land shall be retained" (art. 8).

6. With regard to the right to economic development, articles 95 and 98 of the Constitution refer respectively to the founding of the Republic's economic system on the principles of social justice that guarantee everyone a dignified existence of benefit to the community, to which end the State must promote economic development, the diversification of production and the creation of new sources of wealth to increase the income level of the population and consolidate the country's economic sovereignty. The State must protect private initiative, without prejudice to its power to enact measures for the planning, rationalization and promotion of production and to regulate the circulation, distribution and consumption of wealth, in order to stimulate economic development.

7. Where social development is concerned, article 72 of the Constitution establishes the duty of the State to protect associations, corporations, societies and communities which have as their purpose the better attainment of the purposes of the human person and of life in society, and to promote the organization of cooperatives and other institutions which work to improve the people's economy. The Constitution also deals at length with social rights in title III, chapter IV (arts. 72-94).

8. In addition, the laws of the Republic establish the rules governing the participation of foreign capital in the country's economic development (art. 126). According to the Constitution, no contract involving the national interest may be concluded without the approval of Congress, except those necessary for the normal conduct of the public administration and those permitted by law. No new concessions of hydrocarbons or other resources specified by law may be awarded unless they are authorized by a joint session of the two Chambers, duly informed by the National Executive of all the relevant circumstances, and then only in accordance with the conditions fixed by the Chambers and subject to the completion of the legal formalities. Moreover, no contract involving the national interest or the interest of a federal State or a municipality may be concluded with foreign States or their official bodies or with companies not domiciled in Venezuela, nor may such contracts be transferred to them, without the due authorization of Congress (art. 126). Contracts involving the public interest shall be deemed to include, even if not stated expressly, a clause to the effect that any doubts or disputes which may arise in connection with such contracts and which are not resolved amicably shall be

decided by the Venezuelan courts, in accordance with the law, and that they may not give rise to foreign claims for any reason (art. 127).

9. Venezuela achieved its political independence at the beginning of the nineteenth century and it has maintained and consolidated its economic independence, particularly in recent decades, in accordance with the spirit of article 1, paragraph 2, of the International Covenant on Civil and Political Rights. In this connection attention must be drawn to the Acts nationalizing the iron and steel and oil industries in the mid-1970s and to the creation of the respective State corporations to manage these industries. On the international stage Venezuela engages in extensive diplomatic activity in regional and subregional groups and in groups of developing countries in order to lay the foundations for a new international economic order and increase the economic cooperation among countries.

10. Venezuela has supported and defended the decolonization process initiated by the United Nations immediately following its foundation in 1945 and in particular since the establishment in 1961 of the United Nations Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, known as the Special Committee on Decolonization. Venezuela's policy with regard to decolonization is based on the principles of the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which establishes the right of all peoples to self-determination, complete freedom and complete independence, the exercise of their sovereignty and the integrity of their national territory.

Article 2

11. The civil and political rights embodied in the Covenant are accorded by the Venezuelan State to all the inhabitants of the territory of the Republic without discrimination of any kind. The Constitution states that the fundamental rights and freedoms belong "to all inhabitants of the Republic"; in other words it establishes the basic principles of non-discrimination and universality of rights. Of course, as is the case in other States with respect to their nationals, in Venezuela some political rights are reserved for Venezuelans, such as the right to participate in political life, stand for election and vote in elections. However, as article 111 of the Constitution states: "Voting in municipal elections may be extended to foreigners". On the basis of this provision of the Constitution, the right to vote in local elections has been accorded by law to non-Venezuelans since 1976. The occupation of certain public offices is also subject to some restrictions, but this cannot be regarded as discrimination. For example, article 112 of the Constitution requires that anyone who seeks to hold such offices must be able to read and write. Although the ideal is that all the inhabitants of the Republic should be able to read and write, there is still a small proportion of the population which has not achieved literacy.

12. The following points must be made in connection with the status of the Covenant and of the international human rights instruments in general in Venezuela's domestic law: the Constitution does not resolve this issue in clear terms, nor does it state with sufficient precision the ranking of such instruments within the national legal order. Article 128 merely states a

general rule that international treaties concluded by the National Executive must be approved by special laws. It may be inferred from this provision that if there is a clash between the provisions of a treaty and a law enacted prior to the treaty's entry into force, such a law will be tacitly revoked by the special law incorporating the treaty in domestic legislation, in accordance with the principle of the derogatory effect of later laws with respect to earlier laws which conflict with them, or leges posteriores priores contrarias abrogant.

13. But the interpretation is more difficult when it comes to determining which law must prevail when a law enacted after the law approving the human rights treaty conflicts with it. In this connection both the doctrine and the national case law, on the basis of the interpretation given to article 2 of the International Covenant on Civil and Political Rights and with the support of article 50 of the Constitution, have accorded to the international human rights treaties ratified by Venezuela the status of self-executing laws and placed them on an equal footing with the provisions of the Constitution itself.

14. Article 50 of the Constitution states:

> "The enunciation of the rights and guarantees contained in this Constitution must not be construed as a denial of other rights and guarantees which, being inherent in the human person, are not expressly mentioned herein.
>
> The lack of a law regulating these rights does not impair their exercise".

15. On the basis of this constitutional rule, the doctrine and the national case law have held that the international human rights treaties ratified by Venezuela acquire the status of provisions of the Constitution in Venezuela's legal system and that therefore the rights embodied in such treaties, being inherent in the human person, have that status too. They may not be ignored, revoked or diminished by any law.

16. In relation to the most recent and important innovations in the legal order affecting the procedural instruments available to the inhabitants of the country and offering them prompt and effective protection of their human rights, an account has already been given in the second periodic report of the content of the Amparo (Constitutional Rights and Guarantees) Act (see CCPR/C/37/Add.4, of 19 May 1992, paras. 15-21).

17. Recently (10 December 1997) the legislative chambers adopted, with a vacatio legis of one and a half years, so that it will enter into force on 1 July 1999, the new Code of Criminal Procedure, which contains a number of important changes (see annex 1).

18. The main changes contained in the new Code may be summarized as follows:

(a) Criminal court proceedings are changed from inquisitorial and written to accusatorial and oral;

(b) Closed hearings are abolished, and in future all proceedings are to be public;

(c) Written proceedings, which amongst other drawbacks cause delays, are abolished in favour of oral hearings in which the parties must assert and test the truth of the facts before a court;

(d) The current court system, in which the judges deal with cases without seeing the faces of the victim or the accused, is transformed into a process in which the judges, prosecutor and victim on the one hand and the defence counsel and the accused on the other will always see each other face to face and nothing will be done outside the courtroom, where the parties will have to submit their pleas and arguments before the judges;

(e) Cases will be heard in the presence of members of the public interested in learning about the facts, and nothing will be secret because all the persons involved will have the same information as is given to the judges during the hearing;

(f) The police will no longer intervene in court proceedings. The only task of the criminal investigation police, under the control of the Public Prosecutor's Department, will be to produce evidence to enable the Office of the Attorney-General to decided whether to proceed against the alleged perpetrators;

(g) Accused persons will have the assistance of counsel from the outset;

(h) So-called "holiday justice" will be abolished: the members of the court which begins to hear a case will be the ones to hand down the sentences;

(i) It will not always be necessary to go to court; instead there may be a settlement between the parties, leaving open the possibility of a compensation agreement between the accused and the victim when the offence relates to available property carrying a legal title or in the case of a culpable wrong, always subject in any event to the prior approval of the judge in the case;

(j) In all cases the court, immediately after hearing the arguments, will declare the accused innocent or guilty;

(k) The citizenry will be involved, either as members of a mixed tribunal (escabino) or as members of a panel of jurors, without any legal qualification being required.

19. The fundamental principle of the reform is the abandonment of the inquisitorial in favour of the accusatorial system.

20. The accusatorial system established in the new Code is based on the following principles and institutions:

(a) The proceedings are initiated by a person other than a judge;

(b) There is absolutely no connection between the role of the prosecutor or investigator and the role of the decision-maker;

(c) The evidence must be brought by the parties, and the court must take its decision on the basis of the principles of contradiction and congruity;

(d) The possibility of jury trial is available;

(e) Proceedings are invested with new guarantees and subject to new methods: legitimacy, oral hearings, public hearings, promptness, concentration, free evaluation of evidence, public participation, etc.

21. Where necessary, reference will be made to the innovations introduced by this new Code of Criminal Procedure in the remaining paragraphs of this report.

Article 3

22. Women's rights began to be recognized in Venezuela in the 1940s, in particular with the 1942 reform of the Civil Code and the political, social and legal changes introduced in Venezuela from 1945. Votes for women were introduced in 1946, and then for the first time women were elected to Parliament. The 1961 Constitution placed women's rights on an equal footing with those of men. A woman was made a member of the Executive Cabinet for the first time in 1964. In addition to holding senior posts in the executive, legislature and judiciary, women have also served as State governors, mayors, senators, deputies, ambassadors, etc. The involvement and advancement of women in public affairs was accelerated in 1974 by the creation of the first women's advisory commission of the Office of the President of the Republic, which organized the first Venezuelan Congress of Women. The post of Minister of State for the Participation of Women in Development was created in 1979, and the Minister promoted the reform of the Civil Code in Parliament. The National Women's Office was established in 1984 under the Ministry for Youth. This Ministry became the Ministry of the Family 1987, and the Sectoral Department for the Advancement of Women was established under its auspices. Lastly, 1989 saw the creation of the Ministry for the Advancement of Women, which was made responsible for coordinating and implementing the programmes for the participation of women in all areas of national life, on an equal footing with men.

23. Venezuela is a party to the Convention on the Elimination of All Forms of Discrimination against Women. As such, and in compliance with article 18 of the Convention, it submitted its third periodic report to the relevant Committee in 1997; the text (CEDAW/C/VEN/3 of 21 March 1997) is annexed to the present document. That report and the second periodic report to the Human Rights Committee (CCPR/C/37/Add.14 of 19 May 1992) described the progress made in recent years in eliminating all kinds of discrimination against women in Venezuela.

24. These reports also specify and describe the legal framework which, on the basis of article 61 of the Constitution, establishes the political, social and legal equality of all Venezuelans without any discrimination by reason of race, sex, beliefs or social status.

25. The 1982 reform of the Civil Code delivered equality in marriage, in which "the husband and wife shall acquire the same rights and assume the same obligations" (art. 137); this principle is developed by a set of rules relating inter alia to decisions affecting family life and the home (art. 140), the ownership and administration of the common property of the marriage (art. 168),

and the legal equality of parents with regard to their children, in particular parental authority and guardianship and custody (art. 192).

26. The reform of the 1990 Labour Act included special measures to achieve equality between men and women in labour relations. It ratified and developed the constitutional principle of the equality of men and women in labour matters, stating that "women workers shall enjoy all the rights guaranteed in this Act and its regulations to workers in general and shall not suffer any differentials in remuneration or other conditions of labour. Excepted are the rules enacted specifically to protect women with respect to their family life, health, pregnancy and maternity" (art. 379). The new Labour Act (in force since 19 June 1997), which partially revoked the 1990 Act, prohibits any discrimination in labour matters by reason of sex (art. 26), and the whole of its title VI (arts. 379-395) is devoted to the regulation of the labour protection of maternity and the family (see annex 2).

27. The second periodic report examined in detail the 1964 reform of the Criminal Code which, although certainly marking important progress in some areas, still retains discriminatory and unequal rules as between men and women. These obvious inequalities include the discriminatory treatment of adultery offences, the inequality of the penalties for men and women in cases of adultery involving wife-murder for reasons of honour, the mitigation of the penalty when a rape victim is a prostitute, etc. There have been calls for the repeal of these and other provisions of the Criminal Code which clearly establish discrimination and inequality between men and women. In 1980 the Supreme Court of Justice declared void article 423 of the Criminal Code, the first part of which provided that "a husband who surprises his wife and her accomplice in adultery and kills, wounds or abuses one or both of them shall not incur the normal penalties for homicide or wounding". It is hoped that a forthcoming reform of the Criminal Code, already tabled in the legislative chambers, will finally put an end to all the other inequalities and discrimination.

28. The Equal Opportunities for Women Act was promulgated on 28 September 1993 (see annex 3, special issue No. 4,635 of the Gaceta Oficial); the main aims are to guarantee women the full exercise of their rights and to create the Autonomous Institute for Women, with juridical personality, its own funding, and permanent organs to determine, implement, discuss, coordinate, supervise and evaluate policies and other matters relating to the status and situation of women. This Act also envisages the creation of a national office for the protection of women's rights, which will have the functions of ensuring publicity for and application of the legislation and providing free legal aid for the defence of these rights (see annex 3).

29. The Act approving the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") was promulgated on 16 January 1995 (see annex 4, issue No. 35,632 of the Gaceta Oficial). Following the ratification of this Convention the Bicameral Commission on Women of the Venezuelan Parliament drafted a bill on violence against women and the family and submitted it for consideration and study to the Bureau of the Congress of the Republic in November 1996 (see annex 5).

30. The Magistrates' Courts and Proceedings Act, adopted in August 1993, provides that magistrates must resolve disputes on the basis common sense and

equity, including disputes over food and shelter, abusive correction, violence, and ill-treatment in the family, and disputes with neighbours.

31. The Magistrates' Courts Act, adopted in December 1994, provides an alternative and additional means of dispute resolution based on conciliation and equity; it authorizes the nomination and election by the people of community magistrates to dispense free, prompt and local justice, without any formalities but upholding the dignity and the rights of citizens. This experiment in negotiation, conciliation, mediation and equity has proved capable of resolving disputes of various kinds, including disputes relating to abuse, ill-treatment and violence in the family, environmental protection, and all those minor quarrels which are too numerous to be accommodated by the formal justice system.

32. Other inequalities between men's and women's rights contained in the Code of Criminal Procedure, the Intellectual Property Act and the Copyright Act have been eliminated, as the Committee was informed in the second periodic report.

Measures to eliminate discrimination against women

33. The national agency responsible for ensuring equal rights for women in Venezuela is the National Women's Council (CONAMU), which was established by presidential decree on 22 December 1992 in the form of a standing presidential commission (see annex 6, Decree No. 2722 of 22 December 1992).

34. CONAMU has the following functions and powers:

(a) Steering the formulation and execution of public policies and sectoral plans in all institutions of government towards the promotion of de facto and de jure gender equality;

(b) Investigating situations where discrimination against women is in evidence, and formulating recommendations and/or suggesting appropriate procedures for its elimination;

(c) Proposing necessary legislation to ensure the implementation of the constitutional principle of equality between the sexes and the elimination of discrimination;

(d) Cooperating with the agencies of the central and decentralized government authorities in relevant action undertaken by them to eliminate discrimination against women;

(e) Promoting appropriate training and awareness mechanisms with a view to the reinforcement, among all members of society, of attitudes and conduct based on mutual esteem, equal treatment and enhancement of the status of men and women within our society;

(f) Encouraging and fostering the development of scientific knowledge, systematized information and literary and artistic expression that will promote or contribute to the attainment of full de facto and de jure equality between men and women;

(g) Assisting public-sector organizations in obtaining the financial resources required for the execution of gender policies and relevant programmes, and cooperating in coordinating the allocation of those resources to organizations and programmes requiring them;

(h) Promoting, among public-sector organizations, the improved provision of necessary services to women in the legal, socio-economic, socio-political, socio-cultural and socio-domestic spheres that are required for the discharge of their responsibilities;

(i) Any other functions or powers that may be assigned by law.

35. Imbalances persist despite all the legislative, administrative and other measures introduced and the institutional development achieved in the equalization of rights between men and women:

- Participation of women in the national legislature: the numbers of women increased from 1983 to 1988 but then fell from 1988 to 1993:

	Chamber of Deputies		Chamber of Senators	
Year	Men	Women	Men	Women
1983	94.0%	6.0%	100.0%	0.0%
1988	90.5%	9.5%	91.8%	8.2%
1993	93.4%	6.6%	93.8%	6.2%

- The new Suffrage and Political Participation Act provides for a minimum share for women of 30 per cent of the seats in elections by popular vote to legislative assemblies and local councils.

  Participation of women in the public administration: at the ministerial levels, including ministers of State, there are currently two women in the 23-member Executive Cabinet. In contrast, many women hold senior decision-making posts, especially in such bodies as the Office of the Attorney-General of the Republic, where nine of the 11 sectoral departments are headed by women, and in the Ministries of the Family, Education, Foreign Affairs, and Health, as well as in autonomous institutes such as the National Minors' Institute (INAM), the National Institute of Geriatrics and Gerontology (INAGER), the National Institute for Educational Cooperation (INCE), etc.

- Participation of women in private management: the numbers of women vary. There are many women in the Federation of Chambers of Commerce and Production (FEDECAMARAS), Venezuela's biggest employers' organization, where they hold 4.6 per cent of the senior posts. Women currently occupy an average of six per cent of the seats on the boards of companies such as the National Tobacco Corporation, the Telephone Company of Venezuela (CANTV), and Cellular Telephones (TELCEL), and of banks such as Banco

Consolidado, Banco Caracas, Banco Industrial de Venezuela, Banco Federal, etc.

Article 4

36. The provisions of this article of the Covenant are addressed in several articles of the Constitution:

(a) Article 240: "The President of the Republic may declare a state of emergency in the event of an internal or external conflict or when there are sound grounds for believing that such a conflict may occur";

(b) Article 190: "The powers and duties of the President of the Republic are [...] 6. To declare a state of emergency and order the restriction or suspension of guarantees in the cases envisaged in this Constitution";

(c) Article 241: "In the event of an emergency, a commotion which may disturb the peace of the Republic, or grave circumstances that affect economic or social life, the President of the Republic may restrict or suspend the constitutional guarantees, or some of them, with the exception of the ones embodied in article 58 [right to life] and in article 60 (3) and (7) [right not to be held incommunicado or tortured and right not to be sentenced to life imprisonment or degrading punishment]";

(d) Article 242: "Decrees declaring a state of emergency or ordering the restriction or suspension of guarantees shall be adopted by the Council of Ministers and submitted for consideration to the Chambers in joint session or to the Delegated Committee within 10 days of their promulgation";

(e) Article 243: "Decrees restricting or suspending guarantees shall be revoked by the National Executive or by the Chambers in joint session, when the reasons for their enactment have ceased. The cessation of a state of emergency shall be declared by the President of the Republic in Council of Ministers and with the authorization of the Chambers in joint session or of the Delegated Committee";

(f) Article 244: "If there are sound grounds for fearing an imminent disturbance of public order, which do not justify the restriction or suspension of the constitutional guarantees, the President of the Republic in Council of Ministers may adopt the necessary measures for preventing the occurrence of such a disturbance. Such measures shall be limited to the detention or confinement of the persons responsible and shall be submitted for consideration to the Congress or to the Delegated Committee within 10 days of their adoption. If either of these bodies declares the measures to be unjustified, they shall be terminated immediately; otherwise they shall be kept in force up to a limit of 90 days. The law shall regulate the exercise of this power".

37. As can be seen from the language of these rules, the Venezuelan Constitution refers in specific terms to states of emergency and situations in which guarantees are restricted or suspended, as well as to the powers of the National Executive in situations which do not warrant such measures.

38. There are other pieces of legislation which have to do with states of emergency:

- The Central Administration Act, article 24, paragraphs 4 and 5, of which entrust to the Ministry of the Interior the coordination of measures and the processing and implementation of decrees suspending or restricting the constitutional guarantees. Under this Act it is the responsibility of the Ministry of Foreign Affairs to notify the other States parties through the Secretary-General of the United Nations (see annex 7);

- The Security and Defence Act, which partially regulates emergency situations and invests the President of the Republic with the power to order by decree total or partial military mobilization throughout the territory of the Republic. Military mobilization does not require the prior declaration of a state of emergency (see annex 8);

- The National Armed Forces Act, which refers to states of emergency in article 37 in connection with theatres of operations and in article 350 in connection with military mobilization (see annex 9);

- The Code of Military Justice, which refers to the suspension of constitutional guarantees in article 353 in connection with the "extraordinary procedures" (see annex 10);

- In addition, article 6 (7) of the Amparo (Constitutional Rights and Guarantees) Act provides that actions of amparo shall be admissible with respect to all rights, regardless of whether they are related to rules with which the suspension of constitutional guarantees conflicts. This measure of legal protection safeguards all rights and guarantees, including the ones set out in the International Covenant on Civil and Political Rights (see annex 11).

39. The following situations warranting the suspension or restriction of some constitutional guarantees have occurred in Venezuela since the submission of the second periodic report:

The political events of 4 February 1992

40. On 4 February 1992 there was an attempted coup d'état against the constitutional Government. At a special session of the Council of Ministers the President of the Republic promulgated Decree No. 2086 of 4 February 1992, suspending the constitutional guarantees established in article 60, sections 1, 2, 6 and 10, and in articles 62, 64, 66, 71, 92 and 115 of the Constitution, in order to facilitate the full restoration of public order throughout the territory of the Republic. This Decree was published in special issue No. 4,380 of the Gaceta Oficial on the same date. The suspension of the guarantees was ratified that same day by a decision adopted by the legislative chambers of the Congress of the Republic in joint session. The freedoms suspended at that time correspond to the ones contained in articles 9, 12, 17, 19 and 21 of the Covenant. The right to strike was also suspended.

41. On that same date the Government complied with its obligation to notify this measure to the other States parties through the Secretary-General of the United Nations, in accordance with article 4, paragraph 3, of the International Covenant. The States parties to the American Convention on Human Rights were also notified through the OAS Secretary-General, in accordance with article 27, paragraph 3, of the Convention (see annex 12).

42. On 13 February 1992 the President of the Republic restored throughout the national territory, by Decree No. 2097, the guarantees contained in articles 64, 66 and 92 of the Constitution - relating to the freedoms of movement and expression and the right to strike - in order to re-establish the normal functioning of the country's institutions. The freedoms thus restored correspond to the ones contained in articles 12 and 19 of the Covenant. These facts were notified to the States parties through the Secretary-General of the United Nations on 21 February 1992 (see annex 13).

43. The other guarantees remained suspended until 9 April 1992, when by Decree No. 2183 published in issue No. 34,941 of the Gaceta Oficial the President of the Republic restored throughout the national territory the guarantees contained in article 60, sections 1, 2, 6 and 10, and in articles 62, 71 and 115 of the Constitution, relating to liberty and security of person, the inviolability of the home, the freedom of assembly, and the right of peaceful and unarmed demonstration. The rights thus restored correspond to the ones embodied in articles 9, 17 and 21 of the Covenant; this information was conveyed to the States parties through the Secretary-General (see annex 14).

44. On 16 July 1992 the Secretary-General of the United Nations sent communication LA41TR/221(4-4) to the Government of Venezuela, acknowledging receipt of the notifications mentioned above and reporting that he had conveyed to the other States parties the relevant parts thereof (see annex 15).

The political events of 27 November 1992

45. In connection with another attempted coup d'état against the Constitutional Government on 27 November 1992, the President of the Republic promulgated at a special session of the Council of Ministers Decree No. 2668 suspending temporarily the guarantees established in article 60, sections 1, 2, 6 and 10, and in articles 62, 64, 71 and 115 of the Constitution, relating to liberty and security of person, inviolability of the home, the freedoms of movement, expression and assembly, and the right to peaceful and unarmed demonstration. Subsequently, in order to ensure the conduct of the regional elections scheduled for 6 December 1992, the President of the Republic in Council of Ministers promulgated Decree No. 2670 of 28 November 1992, authorizing throughout the national territory the election meetings and other public events held by political parties and groups of voters and by candidates legally nominated to the corresponding electoral agencies (see annex 16).

46. On the date of the temporary suspension of the constitutional guarantees notification was given to the States parties to the Covenant through the Secretary-General of the United Nations, in accordance with article 4, paragraph 3. These circumstances were also notified to the States parties to the American Convention on Human Rights through the OAS Secretary-General (see annex 17).

47. The guarantees contained in article 60, sections 6 and 10, and articles 62 and 115 of the Constitution were restored on 22 December 1992. On 16 January 1993 the President of the Republic restored the other suspended rights throughout the national territory by Decree No. 2764 (see annex 17.1).

48. Following the municipal elections held on 6 December 1992 there was a disruption of public order in mid-January 1993 in the State of Sucre owing to the non-acceptance of the results of the elections by certain political groups and circles in that State. In view of the seriousness of the situation the President of the Republic in Council of Ministers suspended throughout the State of Sucre by Decree No. 2765 the guarantees contained in articles 64, 71 and 115 of the Constitution, relating to the freedom of movement and transit, the freedom of assembly, and the right of peaceful and unarmed demonstration, in order to ensure order and calm in that region of the country. On 25 January 1993, once the situation had returned to normal, the President of the Republic in Council of Ministers decided by Decree No. 2780 to restore all the constitutional guarantees which had been suspended in Sucre (see annex 18).

49. In this case too the notifications required under article 4, paragraph 3, of the Covenant and article 27, paragraph 3, of the American Convention were given (see annex 19).

50. The financial and banking crisis which affected Venezuela, particularly from late 1993 and during 1994, threatened to disrupt the public peace. On 27 June 1994 the President of the Republic in Council of Ministers promulgated Decree No. 241, suspending the constitutional guarantees contained in article 60, section 1, and in articles 62, 64, 96, 99 and 101 of the Constitution, relating to liberty of person, the inviolability of the home, the freedom of movement, economic freedom, the right to own property, and the right of expropriation for reasons of public or social benefit. This suspension was notified to the States parties to the Covenant through the Secretary-General of the United Nations in accordance with the requirements of article 4, paragraph 3, of the Covenant. The texts of Decree No. 241 and the notifications to the Secretaries-General, together with the instructions of the Attorney-General on states of emergency, will be found in annex 20.

51. These guarantees were restored throughout the national territory, with the exceptions mentioned below, by Decree No. 739 of 6 July 1995, for the adoption by Congress of the Consumer Protection Act and the Financial Emergency Regulation Act had equipped the National Executive with legal instruments to deal with the crisis. This same Decree continued the suspension of the guarantees contained in article 60, section 1, in the first paragraph of article 62 and in article 64 of the Constitution in a number of frontier towns indicated in the Decree, where the theatre of conflict and operations theatre No. 1 had been established. Special measures had to be taken in these areas to safeguard national security, in particular from February 1995, when actions by Colombian guerrillas at points on the Venezuelan frontier caused the deaths of eight members of the armed forces in the town of Cararabo. The texts of Decree No. 739 and the corresponding notifications will be found in annex 20.1.

52. The International Covenant on Civil and Political Rights and the other international human rights instruments have been incorporated in current domestic positive legislation, having been approved as laws of the Republic by

the National Congress and having been duly ratified. The rights embodied in these instrument are therefore regarded as self-executing and may be invoked before the judicial and administrative authorities, and the courts of the Republic can and must apply these instruments without the need for any domestic legislation to develop their principles.

53. Both in its Constitution and in practice Venezuela acknowledges that the international human rights rules constitute a list of minimum guarantees and that it is impossible to allow any restriction or impairment under the pretext that the Covenant does not recognize such rights or recognizes them to a lesser degree. Article 50 of the Constitution extends the interpretation in favour of the individual in the following terms: "The enunciation of the rights and guarantees contained in this Constitution must not be construed as a denial of other rights which, being inherent in the human person, are not expressly mentioned herein". This rule is interpreted to mean that "all the other rights inherent in the human person", i.e. all the rights contained in the international human rights instruments ratified by Venezuela, have constitutional status.

54. There is a further consideration relating to the duty of the State to ensure that these rights are equally respected by all groups or individuals operating under its jurisdiction: the rights embodied in the Covenant must be equally respected not only by the State and its agents but also by individuals. Venezuelan legislation therefore provides the corresponding penalties for groups or individuals engaging in activities or committing acts designed to destroy any one of these rights.

55. According to the Constitution and its interpretation, the human rights rules set out in the Covenant constitute a list of minimum guarantees. Thus, in the interpretation of the Constitution the international human rights instruments express the idea that the rights and guarantees accorded as a whole constitute a minimum list and that they cannot be restricted or impaired in any way on the pretext that one of the instruments does not recognize them or recognizes them to a lesser degree. The interpretation is thus a broad one in favour of the individual. This characteristic is the basis of the maintenance of the applicable principle of interpretatio pro homine o pro libertatibus.

Article 6

56. As pointed out in the second periodic report, Venezuela abolished the death penalty for all crimes in 1864. In this connection article 58 of the Constitution states: "The right to life is inviolable. No law may establish the death penalty or any authority carry it out". Venezuela is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty and to the Protocol to the American Convention on Human Rights on the abolition of the death penalty. Furthermore the Venezuelan Criminal Code specifies penalties for any person who deprives another of his life, subject to the exceptions provided by law (grounds of legitimate defence or necessity).

57. A "person's" existence begins at birth, and human life is protected from that moment. Article 17 of the Civil Code refers to the rights of the foetus, stating that "a foetus shall be deemed to have been born in matters concerning

its good, and it is sufficient for a foetus to be born live for it to be deemed a person"; this means that a foetus is not a person until it has been born. However, it is protected in matters concerning its good - for purposes of inheritance for example.

58. The Criminal Code punishes abortion, except for therapeutic purposes. Venezuela is a party to the American Convention on Human Rights, article 4 of which states that the right to life "shall be protected by law and, in general, from the moment of conception".

Maintenance of peace

59. In accordance with the guidelines contained in general comment 14 of the Human Rights Committee on this article, which stresses that the maintenance of peace is a necessary condition for respect of the right to life, it must be pointed out not only that Venezuela is a peace-loving country which, since it achieved its independence at the beginning of the nineteenth century, has never been at war with other States but also that its foreign policy has been focused on the search for and consolidation of peace. It has made consistent efforts to resolve international and internal conflicts, in particular those affecting the Latin American region. It participated in 1981 in the Contadora Group, which promoted peace in the Central American region, in the Rio Group from 1986, and in the Group of Friends, which worked to find a solution to the internal conflicts in El Salvador and Guatemala.

60. There are other more recent examples of this preoccupation of the Venezuelan State:

(a) On 3 December 1997 in Ottawa, Canada, Venezuela signed the Convention on the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction. It had already taken part in the Conferences in Brussels (where the Declaration on this process was adopted) and in Oslo (where the Convention was negotiated and adopted);

(b) On 26 November 1997 the Senate of the Republic approved the text of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons. In this connection the Venezuelan State has been working for the past three years, in conjunction with the Organization for the Prohibition of Chemical Weapons, to establish in Venezuela a national authority to monitor compliance with the commitments which Venezuela assumed by ratifying this Convention;

(c) Venezuela was the first State of the region to sign, on 14 November 1997, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, an international instrument of special importance for cooperation in the hemisphere in the fight against terrorism and drugs trafficking and for the creation of an international criminal law in the hemisphere.

Combatting insecurity and crime

61. The social problems caused by the economic crisis which has affected the country in recent years, illegal immigration, unemployment, drugs use and

trafficking, inflation and the consequent decline in real wages have encouraged crime and produced some increase in the crime rate, especially in the big towns. However, after an upward trend the figures have declined in the past few years. In any event, the situation continues to produce a dual adverse effect: on the one hand crime threatens the lives and physical integrity of the people, and on the other hand it requires increasingly intensive and extensive action by the police, which in some cases can also jeopardize the right to life and respect for civil and political rights in general.

62. Efforts have been made to increase police protection, with special emphasis on training the police to combat crime and improving the intelligence services and the coordination, communications and weapons systems. Nevertheless, police activities and operations and the clashes between the security forces and the criminal world, particularly in the big towns, continue to produce relatively high figures for loss of life and threats to personal integrity.

Extrajudicial executions reported during this period

63. There have been some cases of extrajudicial execution during the period covered by this report, attributable mainly to the police. Some of the cases have been investigated by the authorities and tried by the courts, and the guilty parties have been sentenced. In other cases the reports received have not produced any results owing to the widespread confusion caused by the difficulty of determining the circumstances of the executions in question. The police almost always assert that the deaths occurred in clashes with criminals. In any event, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions has been investigating the various reports and circumstances connected with this type of situation. In addition, the State has been responding to the Special Rapporteur's requests for information, as well as carrying out his recommendations.

Protection of health and campaign against epidemics and diseases

64. As part of its health programmes the State has accepted the "Commitment to Life", the basic purpose of which is to promote the development of a health system capable of responding to the individual and collective needs of the population on the basis of the criteria of universality, efficiency, quality and equity. The main aim is to strengthen activities which enhance the right to life by reducing morbidity and mortality due to various causes by means of:

- Access to the services network for the people;
- Improved growth and development of children and adolescents;
- Attention to reproductive health for individuals and couples;
- Programmes to reduce the rate of cervical cancer;
- Reduction of acute and chronic diseases;
- Reduction of maternal mortality;

- Expansion and adequate provision of services;

- Improvement of health management in frontier and indigenous areas;

- Development of mechanisms to give the disadvantaged population access to essential medicines;

- Strengthening the epidemiological monitoring system and environmental health activities, etc.

65. Public spending on health as a proportion of the national budget has been declining: in 1970 it was 13.3 per cent; in 1974 - at 6.1 per cent - it showed the sharpest drop in the 1970s, followed by 6.2 per cent in 1979. The sector's worst moment came in 1980 - 4.9 per cent; a slight increase began in 1986, reaching a high point of 7.8 per cent in 1982, before the trend turned downwards again, to a level of 5.2 per cent in 1995.

66. The situation of social spending is the same as in the health sector: over the period 1970-1979 the figure fell from 39.8 per cent in 1970 to 18.1 per cent in 1979, with the highest level in 1978 - 45.3 per cent. It remained fairly stable in the 1980s at an average of 18 per cent; in 1995 the figure was 14.1 per cent. Public spending on health is effected through a number of agencies headed by the Ministry of Health and Social Assistance (MSAS) and its affiliated institutes. In 1998 its budget accounted for 1.36 per cent of GDP and 6.55 per cent of the national budget. In 1997 the figures were 1.59 and 6.38 per cent respectively.

67. According to MSAS statistics, the 1995 infant mortality rate was 23.5 per 1,000 live births, which is below the level established as acceptable by UNICEF (33.3 per 1,000). This figure confirms that the programmes of mother and child care, immunization, food supplements, etc., have been effective in reducing the infant mortality rate. The proportion of low birth weight (under 2,500 grammes) is seven per cent of all births, which suggests that maternal malnutrition is not a decisive factor in the infant mortality rate, which varies from one region of the country to another. In 1995 the States of Amazonas (35.6 per 1,000), Delta Amacuro (27.4), Zulia (31.4) and Bolivar (36.1) had the highest rates, which frequently coincided with the highest rates for households with unsatisfied basic needs.

68. Life expectancy at birth was very low up to the 1980s. The average was under 42 years. In a single decade increases of 15 and 20 years have been recorded for men and women respectively. This indicator began to move upwards from the moment when the State initiated its fight against endemic diseases, in particular malaria. The environmental health campaigns improved public health and increased life expectancy at birth. Subsequently, the repeated vaccinated campaigns, health education and the strengthening of the health services infrastructure in the short space of three or four decades facilitated the control of the commonest diseases which were having a negative impact on the statistics. One telling fact is Venezuela's certification as a "polio-free country"; and the number of cases of measles fell by more than 90 per cent in relation to 1993/94. Life expectancy in 1994 averaged 72.1 years for the two sexes.

Measures to prevent, treat and combat epidemic, endemic, occupational and other diseases

69. The main measures to combat endemic diseases include:

- Control of vectors;
- Proper treatment of patients;
- Early diagnosis;
- Environmental health.

70. In order to deal with tuberculosis, which is re-emerging in Venezuela, efforts have been made to identify cases and reactivate laboratories, and prevention and drugs-supply campaigns have been carried out. At the moment, this programme is being equipped with a food component, for the indigenous areas in particular.

71. The commonest epidemic diseases are cholera, dengue and encephalitis. The following measures have been used against them:

- Cholera: proper medical treatment. Prevention: removal and disposal of solid wastes, and prevention campaigns.
- Dengue: proper medical treatment, education and basic health campaigns;
- Equine encephalitis: awareness campaigns, vaccination of equines, bilateral commitments, etc.

72. Where occupational diseases are concerned, the activities are focused mainly on the prevention and treatment of disabilities. It must be stressed in this connection that MSAS has devised promotion and primary prevention campaigns aimed at risk factors which may cause disabilities. Secondary prevention measures are also carried out in order to prevent the deficiencies which cause disabilities. Tertiary prevention activities have been planned in order to prevent slight or temporary disabilities from developing into serious and permanent ones. All of these activities are carried out in the rehabilitation services as part of the "community-based rehabilitation" strategy.

73. These measures for the prevention and treatment of occupational diseases are being backed up by epidemiological and clinical research to identify critical processes and risk factors which affect or cause disabilities and to coordinate intersectoral activities to improve protection against risk factors.

74. The situation with respect to other diseases is as follows:

75. AIDS/HIV: there was a slight decline in morbidity and mortality due to AIDS in 1994 and 1995. Males are six times more seriously affected than women, and the 20-49 age group has the highest rate. The Federal District has the largest number of cases. The medicines supply programme (SUMED) seeks to distribute the necessary medicines to AIDS-sufferers free of charge through

public treatment facilities. In addition, MSAS devises and implements prevention activities and coordinates public and private efforts to cope with this disease, such as the distribution of condoms to high-risk groups.

76. Reproductive health: the percentage of women of child-bearing age treated in MSAS health facilities under the family planning programme has been increasing. Twenty per cent of puerperal complications are connected with in-hospital infections. Attention must be drawn to the adolescent pregnancy rate, which has prompted a sizeable increase in programmes for adolescents, especially family planning.

77. The following national priorities have been established for reproductive health and family planning:

- Measures for the most vulnerable population groups (adolescents, pregnant women, women of child-bearing age, new-born children);
- Breastfeeding;
- Prevention, detection and management of STD/AIDS.

78. The following are the most important results achieved in this area:

- Genuine consolidation of the prevention and health promotion campaigns for women in various States of the country;
- Amendments to the Minors' Protection Act concerning reproductive health;
- Training in the application of the recommendations of the breastfeeding, reproductive health, and growth and development programmes.

79. Cardio-vascular diseases: the overall mortality rate for cardio-vascular diseases rose between 1986 and 1993 from 71.1 to 110 per 100,000 inhabitants for men and from 61 to 87 for women. Almost all of this increase is connected with longer life expectancy for both sexes, changes in lifestyles, the cost of medicines, and problems of access to medical services. Analysis of the age variable shows that increasing age brings a greater incidence of these pathologies. Nine out of 10 deaths occurred among persons aged 45 and over. Of the more effective measures for reducing cardio-vascular risk factors, the following have been programmed:

(a) Health promotion and risk prevention campaigns supported by the Health Ministry or carried out by the Venezuelan Cardiology Association. A cardio-vascular health week is held annually throughout the country, with activities such as exhibitions, talks and demonstrations, free blood pressure checks, laboratory tests, and distribution of educational materials;

(b) Medical treatment in the hospitals and out-patients units of the MSAS services network.

80. Intestinal infections: acute diarrhoeal infections are still the country's most serious problem and the second commonest cause of death among children aged under five years. The following measures are programmed and carried out: awareness campaigns; suitable medical treatment; supply of oral rehydration packs; health education campaigns; creation of community oral rehydration units (UROC); and strengthening of the institutional oral rehydration units (UROI).

81. Most of the deaths due to diarrhoea in the States of Amazonas, Delta Amacuro and Zulia occur among the indigenous population and are caused by the basic sanitation conditions, location of the settlements, cultural habits and other factors. The non-indigenous population is also affected in Zulia. The diarrhoea control programmes in this State reduced in the number of deaths in 1995 and 1996 by about 30 per cent of the 1994 rate.

82. Malnutrition: the diet and nutrition monitoring system (SISVAN), which operates in the MSAS medical establishments, collects statistics on the country's nutritional situation. The malnutrition rate in the under-15 age group (weight/height indicator) fell from 16.2 per cent in 1990 to 11.6 per cent in 1995. But this indicator shows big variations in different regions: it is highest in Portuguesa (20.8%), Delta Amacuro (16.6%), Apure (15.6%), Miranda (14.2%) and Cojedes (13.5%).

83. The nutritional deficit among children aged under two years as measured by the weight/age indicator (WHO tables) shows past and present malnutrition among children. The rate fell from 15.4 per cent in 1990 to 13.8 per cent in 1995. But again there are regional variations: Delta Amacuro (21.3%), Apure (17.5%), Amazonas (16.9%) and Trujillo (15.4%) are above the national average. The first three of these States have large indigenous populations.

84. Measures to reduce the nutritional deficit are carried out under the nutritional protection programmes by the National Nutrition Institute. They are aimed at various age groups: preschool (2-6 years) - special snacks; school (6-14 years) - school meals, special snacks and special meals; and adolescents (15-19 years) - meals in basic education institutions; meals are also provided in public and workplace canteens for the working population and the general public, and free meals are available for the over-65s and for the clearly and permanently disabled.

Environmental protection and development

85. The Environmental Offences Act entered into force in 1992 (see annex 21). Together with the Environment Act (see annex 22) and other legal instruments it constitutes an advanced body of environmental legislation. Environmental management systems have been improved and education programmes have been developed. Business strategies have also been devised for the environment. The Government has produced a policy based on the concept of sustainable development to control and monitor environmental changes, expand the involvement of civil society in this area, generate private initiatives, and adapt national policies to the new world trends in the protection and development of the environment.

86. Policies have been developed to tackle the health risks connected with the environment. Emphasis is given to measuring and assessing the levels of

environmental pollution and the quality of basic services. These policies have been effective in:

- Control of drinking water quality;
- Management and final disposal of solid and dangerous wastes;
- Environmental health monitoring;
- Preparations for emergencies and disasters in the systems for the provision of medical services.

87. The environmental problems caused by industrial development and urban growth have a direct impact on the people's health. Priority has been given to issues connected with air, soil and water quality and with the quality and conditions of housing and work sites.

Violent deaths

88. Like any other society, Venezuela has violent deaths. Accidents (traffic, home, workplace, etc.) are one of the 10 commonest causes of death.

89. There are various kinds of accident-prevention programmes based on the duty of employers and workers to comply with the industrial safety regulations and workplace rules in general, in both factories and offices. In the case of traffic accidents there are permanent campaigns for the use of seat belts, control of speed, compliance with traffic rules, and prevention of drink-driving. The automotive package is also being classified and revised by the sector in question, and more recently there has been a proposal for psychological examinations for drivers, in particular drivers of heavy goods and public service vehicles.

90. The State has made efforts to prevent deliberate homicide by strengthening security measures and combatting crime. New public security forces have been created: they have been supplied with equipment and vehicles and have been given technical training, and their pay and working conditions, etc., have been improved. Nevertheless the intentional homicide figures are still rising: the rate was 16.24 per 100,000 inhabitants in 1992, 20.23 in 1993, and 21.79 in 1994.

91. This situation of a rising crime rate eventually produces other social consequences affecting the right to life, such as the clashes between police and criminals. These clashes are particularly common in the big towns and cause violent deaths. In the fight against crime the police often use weapons and force improperly and on no few occasions have killed innocent persons. It must be pointed out in this connection that in its general comment the Human Rights Committee emphasizes the third sentence of paragraph 1 of article 6 of the Covenant: "No one shall be arbitrarily deprived of his life". It goes on to say that the Committee "considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law

must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities".

Article 7

92. Article 60 of the Constitution states that security of person is inviolable in Venezuela, and section 3 of this article continues: "No one may be held incommunicado or subjected to torture or other procedures which cause physical or mental suffering. Any physical or mental violence inflicted on a person subject to restriction of his liberty is punishable".

93. This provision of the Constitution is one of the guarantees which may not be restricted or suspended even in case of emergency, of disorder that may disturb the peace of the Republic, or of grave circumstances that affect economic or social life (art. 241 of the Constitution). It is consistent with article 4, paragraph 2, of the Covenant and with article 27, paragraph 2, of the American Convention on Human Rights, to which Venezuela is a party. The prohibition on torture is therefore absolute in Venezuela. No circumstance, no matter how grave, authorizes its suspension or reduction. Venezuelan legislation is consistent in this respect with what the Human Rights Committee says on article 7, paragraph 3, of the Covenant in its general comment 20.

94. Although the crime of torture is not clearly characterized in the Criminal Code, article 182 does address it, in the following terms: "Any public official entrusted with the custody or conduct of any person who has been detained or sentenced who commits arbitrary acts against such a person or subjects him to acts not authorized by the relevant regulations shall be punished by a term of imprisonment of between 15 days and 20 months. The same penalty shall be imposed on any public official who, being entrusted with authority over such a person by reason of his functions, commits against him any of the aforementioned acts". In any event, the Ministry of Internal Relations has prepared a bill characterizing torture as a crime, which will be sent by the National Executive to the legislative chambers for consideration and discussion during 1998.

95. The same article 182 characterizes the crime and stipulates a heavier sentence, of between three and six years, when the suffering, violation of human dignity, taunting, torture or physical or mental violence are committed against detainees by their guards or gaolers; this provision also applies to any person who orders such acts in violation of the individual rights recognized in article 60 (3) of the Constitution.

96. Article 183 of the Criminal Code states that, if in the cases specified in the preceding two paragraphs the public official has acted out of some private interest, the penalty shall be augmented by one sixth. Oddly, these two articles are located in title II (Crimes against liberty), chapter III (Crimes against personal liberty), and not in the title dealing with crimes against individuals.

97. It is clear from the legal provisions cited above that Venezuela's domestic law does not distinguish between torture and inhuman or degrading treatment, merely specifying penalties for public officials who commit the generic crime of "arbitrary acts" or acts "not authorized by the relevant

regulations" against persons in their charge. In this sense Venezuelan legislation is consistent with paragraph 3 of general comment 20, on article 7 of the Covenant, which was approved by the Human Rights Committee in 1992.

98. The lack of a clear characterization of the crime of torture in the Criminal Code is made good by the automatic incorporation of the international human rights rule in the country's positive law by virtue of the principle that such rules are self-executing. Venezuela is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to the Inter-American Convention to Prevent and Punish Torture. Both these instruments define with precision the meaning of torture and other cruel, inhuman or degrading treatment, the persons in a position to commit this crime, and its characteristics.

Provisions on torture in the new Code of Criminal Procedure

99. Article 122 of the new Code lists the rights of the accused:

> "10. Not to be subjected to torture or other cruel or inhuman treatment or to treatment which degrades his personal dignity.
>
> "11. Not to be subjected to techniques or methods of affecting his free will, even with his consent".

100. Since court proceedings are oral and since the statements of the accused to officials of the Public Prosecutor's Department or to a judge are in all cases void unless made in the presence of his counsel (art. 127 of the new Code), torture loses its previous importance as a method of obtaining information or extracting confessions.

Rules of conduct for law enforcement officials

101. Presidential Decree No. 3179 of 7 October 1993 enacted the Police Services Coordination Regulations and the Rules of Conduct for Members of the Police Forces. These instruments expressly incorporate in domestic law both the Code of Conduct for Law Enforcement Officials adopted by the United Nations General Assembly on 17 December 1979 (resolution 34/169) and provisions of the Convention against Torture, to which Venezuela is a party.

102. Article 24 of this Decree states:

> "No member of the police forces shall inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or invoke as justification for such conduct the order of a superior or special circumstances, such as a state of war or threat of war, a state of emergency, internal unrest or conflict, suspension or restriction of constitutional guarantees, a threat to national security, internal political instability, or any other public emergency.
>
> Torture means any deliberate act which inflicts on a person punishment, pain or physical or mental suffering for the purposes of a criminal investigation, as a means of intimidation, personal punishment or prevention, or for any other purpose. Torture also means the use on a

person of methods of obliterating his personality or diminishing his physical or mental capacities, even if such methods do not cause physical pain or mental suffering".

Medical standards

103. The second periodic report mentioned in paragraph 82 the difficulty of securing proof in criminal cases owing to the lack of resources and expertise among forensic physicians to determine whether an individual has been subjected to torture that leaves no external traces or signs. This is of course one of the commonest obstacles in such investigations.

104. The State has been making efforts, although still incomplete ones, to overcome such obstacles. The Human Rights Office of the Public Prosecutor's Department initiated a series of national workshops in 1997 in order to update medical professionals in the techniques for identifying torture which leaves no visible, apparent or psychological traces. However, some of these techniques require specialized equipment, which in Venezuela's case is still not being fully used.

Visit of the Special Rapporteur on torture of the Commission on Human Rights, Mr. Nigel S. Rodley

105. Mr. Rodley visited Venezuela from 7 to 16 June 1996, when he was able, in the words of his own report "to meet his overall objective of gathering first-hand oral and written information from a wide number of persons to enable him to make a better assessment as regards the use of torture" (E/CN.4/1997/7/Add.3 of 13 December 1996).

106. The Special Rapporteur received every facility for carrying out his mission. He had meetings with the country's highest authorities, with the Attorney-General and senior officials of his Office, the President of the Supreme Court of Justice, the President and Vice-President of the Council of the Judiciary, the Director of Prisons, the President and other members of the Subcommission on Human Rights and Constitutional Guarantees of the Chamber of Deputies, the Director of the Technical Service of the criminal investigation police, the Director of the Institute of Forensic Medicine, the Director-General of the Metropolitan Police, the Director-General of the Sectoral Department of Intelligence and Prevention Services, and the Commandant General of the National Guard. He also met with persons claiming to have been subjected to torture or members of their families, and with representatives of NGOs. He visited towns in the interior of the country, prisons, etc.

107. After his visit the Special Rapporteur produced his report and made a number of recommendations. The Venezuelan State has been doing everything possible to carry out these recommendations in full. A copy of Venezuela's response to the Special Rapporteur's recommendations, which specifies the measures taken to prevent and punish torture, will be found in annex 23.

Article 8

Prohibition of slavery

108. At the very outset of its independence movement Venezuela declared its determination to eliminate the institution of slavery. One of the first steps taken by the Supreme Court in 1810 was to prohibit the slave trade. During the war of independence the Liberator Simón Bolívar himself freed his slaves and asked others to do likewise. In 1819 he formally proposed to the Angostura Congress the complete abolition of slavery and the slave trade. In 1821 Greater Colombia (the union of republics of which Venezuela was a member at that time) promulgated the Manumission Act, which sought the gradual abolition of slavery. In 1830 Venezuela, now formally separated from Greater Colombia, promulgated a similar act. But it was not until 1854 that the then President of Venezuela, José Gregorio Monagas, formally promulgated the Abolition of Slavery Act, since when slavery has not existed in Venezuela.

109. Existing legislation contains an absolute prohibition of slavery.

110. The Constitution has various provisions and principles relating to this subject: "Everyone has the right to the free development of his personality, with no limitations other than those deriving from the rights of others and the requirements of public and social order" (art. 43); "The liberty and security of the person are inviolable" (art. 60); and "Freedom of labour shall not be subject to any restrictions other than those established by law" (art. 84).

111. The Labour Act establishes the principle that nobody shall be forced to work against his will (art. 32).

112. Article 174 of the Criminal Code states: "Anyone who reduces another person to slavery or subjects him to a similar status shall be liable to six to 12 years' rigorous imprisonment... Anyone involved in the slave trade shall incur the same penalty". Article 4 (10) of the Code provides that "Venezuelans who take part in the slave trade, within or outside the Republic ... shall be liable to prosecution in Venezuela and shall be punished according to Venezuela's criminal law".

113. The country's social and political development made it possible to eliminate in practice the last vestiges of slavery, which without doubt persisted in the rural areas of the country until a few decades ago. The agrarian reform initiated after the restoration of democracy in 1958 awarded plots of land to a large number of peasants; and the expansion of education programmes and of the provision of rural health and other services, together with the unionization and organization of this population group, were other factors which transformed the old feudal structure and semi-slavery in Venezuela's rural areas into paid work regulated by law.

114. There have been isolated cases of the exploitation of children by adults, and such cases have been dealt with by the courts. The authorities have responded promptly to reports of exploitation. There have been reports of children brought to Venezuela from neighbouring countries by persons engaging in informal commercial activities to work as street vendors, as well as cases of child prostitution, etc.

Forced labour

115. Venezuela is a party to the two relevant ILO Conventions: No. 29 concerning Forced Labour and No. 105 concerning the Abolition of Forced Labour.

116. The work done by prisoners in Venezuela is voluntary and governed by the labour regulations applicable to all the country's workers with regard to such matters as remuneration, hours, industrial safety, working conditions, etc.

Article 9

Paragraph 1

117. As explained in detail in the second periodic report, the general principle of freedom is embodied in article 43 of the Constitution, and the right to liberty and freedom of person is contained in article 60 (1), which states that liberty and security of person are inviolable and that consequently nobody may be arrested or detained, unless caught in flagrante, except by a written warrant of an official authorized to order the detention, in the cases and subject to the formalities prescribed by law.

118. The Criminal Code provides a penalty of imprisonment of between 45 days and three years for a public official who, by abuse of his functions and in violation of the conditions or formalities prescribed by law, deprives a person of his liberty. This penalty may be longer than three years' imprisonment if the official commits the act in question by use of threats, violence or other unlawful means of coercion, by forcing a person to perform an act which he is not obliged to perform by law or to suffer such an act, or by preventing him from doing something which is not prohibited.

119. The law provides that when a punishable act has been committed the police authorities may take, out of necessity or urgency, any provisional measures which are essential for the purposes of the investigation of the facts and the prosecution of the perpetrators. It also provides that the law shall specify a brief and peremptory time limit within which such action must be notified to the judicial authorities and the time limit within which the authorities must rule, it being understood that the measures in question are deemed revoked and without effect unless confirmed within that period.

120. The period established by law during which police authorities which have taken measures of preventive detention must bring the accused before a court is eight days from the date of his arrest (art. 75-H of the current Code of Criminal Procedure). They must also submit to the court the records of the measures taken and the instruments, weapons and effects which they have obtained for the purposes of the pre-trial proceedings. The court of instruction must rule on the arrest within 96 hours, except when a longer period is required in serious and complicated cases, but it must rule within eight days at the most.

121. Despite these legal provisions, the police make unjustified arrests fairly frequently, especially when a crime has been committed and the culprits have not been identified, and even when no punishable act has been committed but the police consider some one to be "suspicious". Such unjustified arrests also occur when "sweeps" are made, i.e. prevention operations in areas with high

crime rates, particularly at night in densely populated places, such as the poorer quarters of big towns. Human rights advocates and NGOs in general have declared on several occasions that these sweeps constitute truly abusive action by the police in violation of the constitutional rules cited above. Efforts are being made to prevent the security forces from continuing such operations, which are not only at odds with human rights but have also proved ineffective in the fight against criminals (see annex 24, instructions of the Attorney-General on the prevention of arbitrary arrests).

122. The value of the general principle of liberty established in article 60 of the Constitution is being impaired by the understanding in police circles that during the eight-day period constituting the maximum limit of pre-trial detention any person may be detained for the purposes of advancing the investigation of a crime. The police have been interpreting this provision to mean that they may detain a person for the whole of the eight-day period, regardless of any change in the circumstances which may originally have justified the detention. There is no precise interpretation of the rule by law enforcement officials. They often detain a person for the eight days not in order to carry out strictly necessary investigations but as a punishment, thus undermining the very purpose of pre-trial detention.

123. Under Venezuelan law this eight-day period is a period of exceptional pre-trial detention, which is justified in cases when there exist sufficient grounds for the presumption that an individual has taken part in the commission of a crime together with circumstances indicating that the assumed perpetrator will escape the control of the organs responsible for the investigation, or when it is feared that the investigation will be obstructed by the destruction of evidence which might be used to advance the case. It must be added that, pursuant to the provisions of the last paragraph of article 60 (1) of the Constitution, this measure may only be taken in the event of "necessity or urgency" or when it is "indispensable".

124. Efforts are also being made in this area to educate and instruct the police forces to put an end to this perverse practice. The Public Prosecutor's Department has continued its efforts to mitigate the damage to the right to liberty caused by this interpretation on the part of the members of the security forces. The Department has circulated instructions to prosecutors to review every case and determine whether the pre-trial detention is in accordance with the existing legal requirements, in an effort to end arbitrary detention.

125. It is not always easy to correct such abuses, particularly in societies suffering high crime rates. Cases of such arbitrary detention are increasing, and are even applauded by the people, especially when there have been crimes which cause collective disorder. In such a situation the police forces arrest a large number of citizens without any true grounds, evidence or suspicions. In reality, these police actions have other purposes. In many cases they are "shows" of force, showing off in fact in response to demands from the people, rather than serious preventive criminal investigation measures. There is also the risk of impairing the basic principle of the presumption of innocence.

126. The protests by NGOs and other human rights advocates and the measures taken by members of the Public Prosecutor's Department against police abuses are viewed by the police, and even by broad sectors of the general public, as

complicating or weakening the fight against crime. An effort is therefore also required to promote human rights at the level of general culture. Such a campaign will have to be built around the idea that in a democratic State based on the rule of law there should not be any conflict between the actions of the criminal police and human rights, and that it is perfectly possible to reconcile the requirements of public order and the acquisition of the necessary evidence for the success of a criminal investigation with the guarantees and rights accorded to citizens by the Constitution, the law and the international human rights instruments.

127. Arbitrary arrests can also be made by the police without their realizing what they are doing. This is what is known as "holding" or unacknowledged arrest. The Public Prosecutor's Department frequently has to take action, under the powers conferred by its Act, to "investigate arbitrary detentions and take steps to end them..." (art. 60 (1) of the Public Prosecutor's Department Act).

Release on completion of sentence or for other legal reasons

128. The law also guarantees the liberty of persons subject to release orders and persons who have already served the term of imprisonment to which they were sentenced. Article 60 (6) of the Constitution is clear in this respect: "No one shall remain in custody after the issue of an order of release by the competent authority or after he has served his sentence". However, the full application of this constitutional rule is sometimes prevented by arbitrary police action and by the lack of modern record-keeping methods in prisons. There have been occasional reports of cases in which a person was released (on the expiry of the eight-day period of detention, for example) but then re-arrested. In other cases release orders have not reached the prison, and in others, for want of proper records, the prison management is unaware of the exact date on which a custodial sentence will be completed.

129. The authority to which a release order is addressed must comply with it without questioning its grounds or its justice or legality, in accordance with the provisions of the second part of article 6 of the Judiciary Act. This article states that the governors of places of detention must release prisoners in respect of whom a release notice or order has been issued by a competent court, with the sole exception of cases in which other proceedings are being conducted against the prisoner in question in a separate court, which has not yet ordered his release.

130. Article 318 of the current Code of Criminal Procedure states:

> "Once a person has been detained, he may be unconditionally released only in the following cases:
>
> 1. In the case referred to in article 186, if he has been mistakenly arrested in flagrante delicto when the act committed is not punishable or does not carry a prison sentence;
>
> 2. If the arrest warrant has been revoked;

3. If the accused has been detained as the presumed perpetrator of a punishable crime warranting a custodial sentence but the charges laid against him concern acts not warranting such a sentence;

4. When the proceedings have been suspended in private actions by reason of some legal irregularity on the part of the person laying the charge.

In such cases the person released is still liable to be re-arrested under a new warrant, if the criminal proceedings are re-opened;

5. If the order for dismissal, acquittal or suspension of the proceedings is made final on any grounds other than those set out in paragraph 4".

131. Article 319 of the Code states that in the cases mentioned in article 318 (2) and (5) the same court which revokes the arrest warrant or confirms the dismissal, suspension or acquittal shall order the immediate release of the detainee in question.

132. The Committal and Suspension of Sentences Act, which has been in force since 1980, provides that "committal for trial and suspension of sentence shall entail the immediate release of the person charged or found guilty, as the case may be" (art. 3).

133. Venezuela's legal system allows pre-trial release or release on bail, which may be requested during the preliminary hearing. When such release is granted, the accused is required not to leave the jurisdiction of the court which granted the request and to present himself to the authority and at the times designated by the court. When due grounds exist, the court may authorize a person released on bail to leave the jurisdiction of the court (see arts. 320-322 of the Code of Criminal Procedure).

Limits and conditions of deprivation of liberty

134. Article 60 (7) of the Constitution states: "No one may be sentenced to life imprisonment or degrading punishment. Sentences of restriction of liberty may not exceed 30 years". Similarly, article 94 of the Criminal Code states that "in no case may a sentence of restriction of liberty imposed under this law exceed a maximum limit of 30 years".

135. Article 254 of the new Code of Criminal Procedure establishes the limits to judicial preventive deprivation of liberty, stating that such sentences may not be imposed on persons aged over 70 years, on women in the last three months of pregnancy, on breastfeeding mothers for six months following the birth, or on persons suffering from a duly certified terminal illness. If some personal preventive measure is essential in these cases, the court shall order house arrest.

Deprivation of liberty for reasons of social benefit

136. Article 60 (10) of the Constitution states: "Measures of social benefit may be imposed on a person constituting a potential danger only in accordance

with the conditions and formalities prescribed by law. In all cases such measures shall be designed for the rehabilitation of the person concerned for the purposes of life in society".

137. The Vagrancy Act was in force in Venezuela from 1956 (five years before the promulgation of the current Constitution); it was a continuation of the Vagrancy Act of 14 August 1939, amended in part on 15 June 1943. This Act, which was in force and applied up to November 1997, established preventive measures applicable to persons who, on the terms established by the Act, appeared to be potential criminals.

138. It was obvious that this Act violated the constitutional principles and rules on guarantees of liberty and the rights contained in international human rights law. This point was made repeatedly by NGOs and human rights activists, as well as by leading members of Venezuela's legal profession. Bills to replace the Act were even drafted and submitted to the Congress of the Republic. None of these bills prospered, among other reasons because they suffered from the same defects as the Act.

139. Finally, after an action for repeal of the Act on the grounds of its unconstitutionality had been before the Supreme Court of Justice for 12 years, the Plenary Court declared the Act unconstitutional in its decision of 14 October 1997 (see annex 25).

Paragraph 2

140. The criminal investigation police is authorized to take statements from suspects (art. 75-D of the Code of Criminal Procedure), but this power is subject to article 193 of the Code, which provides that such statements may not taken under oath and must be free from any pressure or coercion; these are in fact the conditions applicable during the instruction stage of the case.

141. Such a statement may acquire full legal effect if subsequently confirmed before a court, and even if not confirmed it may give rise to a confession which may be deemed more or less important evidence. Accordingly such statements by suspects must be protected by the same guarantees and safeguards as the law accords to statements made by persons who have been charged. And suspects must enjoy the following guarantees and safeguards when making statements to the criminal investigation police:

(a) The statement may not be taken from the suspect under oath and must be free of any pressure or coercion;

(b) The suspect must be informed of the facts which are being investigated and that he is not obliged to swear an oath or to answer questions in criminal proceedings relating to himself, his ancestors, his relations within the fourth degree of consanguinity or the second degree of affinity, or his spouse;

(c) Leading or trick questions may not be put;

(d) A suspect may make statements to agents of the criminal investigation police as often as he wishes, provided that the statements relate to the facts under investigation.

142. Article 122 of the new Code of Criminal Procedure, which has already been adopted and will enter into force in July 1999, specifies the rights of the accused:

(a) To be informed specifically and clearly of the facts with which he is charged;

(b) To communicate with his family members and with a lawyer of his choosing or a legal aid association, in order to inform them of his arrest;

(c) To be assisted, from the initial stages of the investigation, by a counsel appointed by himself or his relations or, failing that, by a court-appointed counsel;

(d) To be assisted free of charge by a translator or interpreter if he does not understand or speak Spanish;

(e) To request the Public Prosecutor's Department to carry out investigations with a view to disproving the charges against him;

(f) To appear in person before the court in order to make statements;

(g) To request that the investigation be speeded up and to be informed of its findings, except in cases where a part of the findings has been declared confidential and only for as long as such a declaration is in force;

(h) To request that remand in custody should be declared in advance to be inadmissible;

(i) To be informed of the constitutional provision exempting him from making a statement and, even if he agrees to make a statement, exempting him from making it under oath;

(j) Not to be subjected to torture or other cruel, inhuman or degrading treatment;

(k) Not to be subjected to techniques or methods which impair his free will, even with his consent;

(l) Not to be tried in his absence, in compliance with the Constitution of the Republic.

Paragraph 3

143. Police authorities holding a person in custody must bring him before the corresponding court within a maximum of eight days from the date of arrest for the purposes of the summary proceedings. The court of instruction must rule on the detention within 96 hours, except in serious and complicated cases which

require a longer period, but then the court must rule within a maximum of eight days.

144. In the light of specific requirements and in accordance with article 182 of the Code of Criminal Procedure and article 7 of the Committal and Suspension of Sentences Act, the court of instruction, instead of ordering detention, may commit the accused for trial and order him to appear, in accordance with the requirements of article 182 of the Code, provided that: (a) the accused has not previously received a correctional sentence of deprivation of liberty and has not previously been committed for trial, unless he was acquitted by a final decision; (b) the alleged punishable offence carries a maximum custodial sentence of no more than five years (if more than one sentence is available, the longer shall prevail); and (c) the accused undertakes to comply with the court's instructions. The accused may also be released on bail.

145. The new Code of Criminal Procedure, which enters into force in July 1999, corrects a serious problem of Venezuela's criminal justice which up to now had been the general rule for the detention of accused persons. Article 252 of the Code states: "Any person accused of taking part in a punishable act shall remain at liberty during the proceedings, except as provided for in this Code. Deprivation of liberty is a preventive measure admissible only when other preventive measures are insufficient for the purposes of the proceedings".

146. With regard to the right to be tried or released within a reasonable period, the Venezuelan legal system establishes reasonable time limits within which a person must be sentenced or finally acquitted (see the replies on art. 14, para. 3 (c) below).

147. It is hoped that the new Code of Criminal Procedure, which completely changes the former inquisitorial and written proceedings into accusatorial and oral proceedings, will solve this problem of undue delay. Article 1 states: "No one may be found guilty without first being tried in an oral and public hearing conducted without undue delay before an impartial judge in accordance with the provisions of this Code and under the protection of all the rights and guarantees of due process contained in the Constitution of the Republic and its laws and in the international treaties, agreements and conventions signed by the Republic".

Paragraph 4

148. Article 42 of the Amparo (Constitutional Rights and Guarantees) Act provides for habeas corpus as a guarantee of personal liberty in the following terms: "The judge shall order, within 96 hours of the receipt of the application, the immediate release of the detainee or the lifting of any restrictions imposed on him, if he finds that the legal formalities for deprivation or restriction of liberty have not been complied with. If he considers it necessary, the judge may make this order subject to a personal surety or a ban on leaving the country, for a period not exceeding 30 days".

Paragraph 5

149. Article 3 of the Constitution stipulates that the Government of the Republic is liable, and article 47 states that Venezuelans and foreigners may

claim compensation and reparation from the Republic, the federal States or the municipalities for damage, loss or expropriation resulting from acts of the legitimate authorities in the exercise of their public functions.

150. Article 46 of the Constitution establishes the personal liability of public officials and employees who perform acts which violate or diminish the rights guaranteed by the Constitution. This liability may be criminal, civil or administrative, depending on the case, and the excuse of having received orders from a superior inconsistent with respect for the guaranteed rights is not admissible. This constitutional rule thus establishes the effective right of every unlawfully detained person to obtain reparation.

151. The powers of the Public Prosecutor's Department offer the option, at the moment specified by law, of requesting the judge hearing a case concerning wrongdoing by a public official to order the payment of compensation for damage or loss. This option may be exercised if the injured party expressly so requests or if he has few economic resources (art. 4 (23) of the Public Prosecutor's Department Act).

152. Articles 284 et seq. of the new Code of Criminal Procedure deal with reparations for persons who have been unlawfully detained. These articles provide that: (a) when a convicted person is subsequently acquitted on review of the sentence, he shall be compensated for the time spent in custody; he shall also be compensated when the offence is declared not to exist or not to be a criminal offence, or when his participation cannot be proved, and he has suffered deprivation of liberty during the proceedings (art. 286); and (c) when the party liable to pay is the State (art. 287).

Article 10

Paragraph 1

153. Venezuelan law is very clear with respect to the treatment of any person deprived of his liberty.

154. The Ministry of Justice (the executive branch of the Public Power), the courts of the Republic (the judicial branch) and the Public Prosecutor's Department (an autonomous and independent agency) all have a direct role in the legal regime applied in the prisons system. Without prejudice to the need for coordination and cooperation among the different branches, each of these organs of the State has its own responsibilities and powers in connection with the obligation to respect and safeguard the human dignity of detainees.

155. Article 60 (3) of the Constitution states: "No one may be held incommunicado or submitted to torture or other procedures which cause physical or mental suffering. Any physical or mental violence inflicted on a person subjected to restriction of his liberty is punishable"; and section 7 goes on to state: "No one may be sentenced to life imprisonment or degrading punishment. Sentences of restriction of liberty may not exceed 30 years".

156. The Prisons Act and its Regulations (art.6, para. 2) prohibits "subjecting prisoners to any kind of degrading or humiliating treatment and the use of measures of coercion which are not authorized by law". Article 3 of Decree

No. 1126 of 2 September 1975, which enacted the Prisons Regulations, states that no disciplinary measure may take the form of verbal or physical abuse or other measures or acts offensive to human dignity.

157. As stated in the second periodic report, the penalties applicable to officials for infringement of these rules were set out in the 1964 legislative reform, in fact in the second part of article 182 of the Criminal Code, which provides that any official who causes suffering, insults to human dignity, degrading treatment, torture, or physical or mental violence inflicted on a detainee at the hands of his guards or gaolers, or any person who orders such treatment in violation of the individual rights set out in article 60 (3) of the Constitution shall be sentenced to a term of imprisonment of between three and six years.

158. The subject of the humane treatment of detainees and due respect for their dignity is addressed in the rules on discipline contained in the Prisons Act. Article 50 of this Act states that the maintenance of discipline and the orderly routine of prison life are essential requirements of the prison system, and that to this end every prisoner shall receive on arrival comprehensive information about the rules which must be obeyed and the conduct which must be maintained, in accordance with the Act and its Regulations, especially with regard to disciplinary offences, punishments, rewards, privileges and rights.

159. The following disciplinary measures may be applied to prisoners under article 53 of the Prisons Act:

(a) Private warnings;

(b) Total or partial withdrawal of regulation benefits, privileges and awards;

(c) Confinement to cell for up to 30 days;

(d) Solitary confinement for up to 15 days without being kept entirely incommunicado;

(e) Assignment to a group subjected to a stricter regime;

(f) Transfer to another establishment.

160. Article 54 of the Act stipulates that the punishments specified in paragraphs (c) and (d) shall be applied only under the daily and strict supervision of the prison doctor, who must propose the lifting or modification of the measure before its expiry if the prisoner's health so requires. The procedure for the application of disciplinary measures includes the prior notification of the prisoner of the misconduct alleged against him and his right to make a statement in his defence.

161. The authorities are required to establish the periodicity and duration of visits. The Prisons Act and its Regulations stipulate the obligation of the authorities to set the periodicity for visits by family and friends at twice a week; this arrangement is in force in all the country's prisons. Two visits per week are normally allowed. These visiting arrangements are not subject to any

restriction except in exceptional circumstances, for example if there is a riot or some other disruption of order warranting exceptional security measures.

162. Intimate visits for prisoners are permitted and arranged. Such visits are designed to encourage single-partner relations in an intimate environment, prevent the couple from breaking up, and permit them to exercise the right to maintain their affectionate relationship. This right is available on a permanent basis in the absence of any of the grounds for its suspension specified in the instructions governing such visits (see annex 26).

163. In order to ensure that the rules mentioned above are complied with in practice and to help all prison personnel to give due respect to the human dignity of the prisoners, the Ministry of Justice, with European Community and NGO assistance, has run human rights training courses for almost all such personnel, both managers and warders, especially on the proper treatment of prisoners.

164. The Institute of Prison Studies, an agency of the Ministry of Justice created in 1990, trains senior prison technical staff, who take up custodial posts on the completion of their training. As part of their theoretical and practical training they are instructed in how to treat prisoners in accordance with domestic law and the relevant international rules.

165. In addition, the Foundation for the Integrated Development of the Prison System, created by and operating in the State of Miranda as part of the administrative decentralization, has been running training programmes for custodial personnel. Other State governments have also initiated programmes of this kind.

166. One important step forward was the replacement of the former General Inspectorate of Prisons, which was an agency of the Prisons Department, by the National Coordination Committee for Inspection and Control of the Prison Service, made up of a public defender of prisoners, a representative of the Congress of the Republic, representatives of NGOs, and a representative of the Ministry of Justice. Its basic purposes are to supervise the conduct of prison officers and verify the legitimacy of procedures for the investigation of their conduct and of the disciplinary measures imposed on them for ill-treating prisoners or committing any other irregularity.

167. In some prisons the prisoners have their own periodical publications, in which they state their complaints, claims, requirements and disagreements connected with various aspects of prison life (see annex 27).

168. The new Code of Criminal Procedure states expressly the rights of prisoners to exercise while serving their sentences all the rights and options accorded to them by criminal and penitentiary law and the regulations and to make to the Supervisory Tribunal any comments connected with such law and regulations (art. 471).

169. This Tribunal monitors the application of the prison regime. Amongst other measures, it is empowered to order inspections of prisons, as necessary, and can summon prisoners to appear for the purposes of monitoring and control (art. 479). Judges of the Tribunal may be accompanied on prison visits by an

official of the Public Prosecutor's Department (art. 480). The judge making the visit issues any instructions he sees fit in order to correct and prevent any irregularities, and if necessary he urges the competent authority to correct them (art. 483).

170. The Public Prosecutor's Department has 14 officers assigned to prison matters; their main function is to ensure respect for the human rights of the prisoners held in the country's various prison establishments.

Paragraph 2

171. The prison population increased from 1987 to a high point of 31,000 in 1991, including persons awaiting trial and persons serving sentences. The figure began to decline in the years up to 1996, reaching a low point of 24,767 in 1995, of whom 18,295 (73.87%) were awaiting trial and 6,387 (25.79%) were serving sentences.

172. In October 1997 the ratio of installed capacity to prison population produced an overcrowding rate of 53.22 per cent. However, only nine of Venezuela's 31 prisons had serious problems of overcrowding: the House of Re-education and Handicrafts in El Paraíso, with a rate of 320.25 per cent,; the Mérida Detention Centre (213.33%); the Cuidad Bolívar National Prison (165.5%); the San Juan de los Moros Detention Centre (266.91%); the Maracaibo National Prison (213%); the Detention Centre in the capital (50.29%); the Cumaná Detention Centre (110.40%); the Valencia National Prison (66.15%); and the Los Llanos Detention Centre (25.20%). The average overcrowding rate is 53.22 per cent of the installed capacity, which is designed to house a total of 16,171 prisoners. However, when calculated on the basis of the "maximum" capacity, including other places which can be used to house the prison population, the overcrowding rate falls substantially.

173. The overcrowding of Venezuela's prisons is due to various factors, some of which are becoming less of a problem: the slowness of the judicial system (which, it is hoped, will be corrected under the new Code of Criminal Procedure, which will enter into force after a vacatio legis of one and a half years from the date of its adoption in December 1997); the poor record-keeping and the lack of control of information about the legal position and social background of prisoners, which impede the prompt disposition of the various options for serving sentences envisaged in the Prisons Act; the problems of transporting prisoners to court for procedural formalities (judges are prohibited by law from going to places of detention for such purposes); the persistent shortage of public counsel for prisoners; the increase in crime, etc.

174. In view of the need for a detailed investigation of prison problems, a census was carried out in June 1997 in all the country's prisons; sufficient information was extracted from this census for the creation of a national records and control system for prison inmates. This has facilitated the daily monitoring not only of prisoners entering or leaving prison but also of the status of their trials in the courts and of other data necessary for the full application of the prison regulations. Various public and private institutions with an interest in prison matters have contributed to this investigation and the subsequent measures.

175. Owing to the slow delivery of justice by the criminal courts, Venezuela has not always been able to keep persons awaiting trail fully separate from prisoners serving sentences. The past year has seen the introduction of a procedure for the majority of persons awaiting trial to be accommodated in remand centres, while prisoners serving sentences are housed in prisons.

176. With the prison construction programme under way and with the acceleration of trials and reduction of the overcrowding of places of detention, it should be possible, within two years at most, to comply with the obligation to classify persons awaiting trial and segregate them from prisoners serving their time following final sentencing.

177. The creation of the computerized records and control system has facilitated the study of individual cases and the taking of decisions on the granting of the privileges authorized by law. In 1997 alone, this resulted in the approval of 412 early-release measures.

178. A statistical summary of Venezuela's prison population in June 1997 is given below:

(a) The prison population totals 25,379, including 7,945 serving sentences (31.3%) and 17,434 awaiting trial (68.7%);

(b) The average age of the prison population is 32 years;

(c) Persons awaiting trial, by court:

First instance	15,818
Second instance	9,993
Third instance	145

(d) Education level:

Illiterate	1,850
Complete primary	16,731
Incomplete primary	5,052
Complete secondary	3,042
Complete technical	297
Incomplete technical	139
Complete university	249
Incomplete university	328

(e) Nationality of persons awaiting trial:

Venezuelan	14,840
Aliens with papers	525
Aliens without papers	2,069

(f) Nationality of prisoners serving sentences:

Venezuelan	6,720
Aliens with papers	341
Aliens without papers	884

(g) Types of crime:

Armed robbery	7,181
Simple homicide	3,653
Drugs	2,669
Possession of weapons	2,350
Aggravated homicide	2,243
Aggravated robbery	1,452

179. The National Prison Construction Fund (FONEP) was established in 1996 to take over the construction, improvement and maintenance of the physical plant of prisons. In 1996-1997 this Fund built two new prison establishments: the El Rodeo II detention centre in the capital, and the Metropolitan II prison in Los Valles del Tut. Each of them can house 1,560 inmates. In December 1997 new buildings were ready in Mérida and Barquisimeto, with a capacity of 1,628 prisoners. The completion of these new buildings has made it possible to segregate prisoners serving sentences from those awaiting trial.

180. The following proposals for construction or repair will be implemented in 1998:

- Construction of two wings, each for 40 inmates, with four watch towers, in the police holding facility in Tucupita, Delta Amacuro;

- Building to accommodate the civil guard, with a perimeter fence, workshops and classrooms for inmates, in the women's annex of the Trujillo detention centre, Trujillo;

- Completion of the women's annex, maximum security wings, chapel and perimeter fence in the Barcelona prison, Anzoátegui;

- Extension of the outpatients unit, water and electricity supply systems, kitchens and administrative offices in the Los Llanos prison at Guanare, Portuguesa;

- Construction of a secure wing for 176 inmates and repair of the wing used for the detention of members of the armed forces awaiting trial in the Sabaneta prison, Maracaibo, Zulia;

- Completion of the perimeter and interior protection and security system in the Barquisimeto detention centre, Lara;

- Completion of the perimeter and interior protection and security system in the Mérida detention centre, Mérida;

- Construction of the special re-education wing and remodelling of the Casa Amarilla at the El Dorado agricultural re-education centre;

- Construction of workshops and classrooms in the women's annex of the Tocorón detention centre, Aragua;

- Construction of two wings, each for 50 inmates, with six watch towers and a perimeter fence in the police holding facility in Puerto Ayacucho, Amazonas;

- Installation of new cooking, refectory and hospital equipment in the various prison establishments;

- Equipment of workshops and other training facilities in the Barquisimeto detention centre, Lara.

Paragraph 3

181. The Prisons Act makes it mandatory for prisoners to take part in work activities, preferably of an educational nature. It also stipulates mandatory primary education "for persons who have not acquired this level of knowledge". These activities are not mandatory for persons awaiting trial. However, the educational work and training activities are usually available to such persons as part of the integrated assistance system.

182. The work activities in prison establishments are managed by the Prison Work Bank, an autonomous agency of the Ministry of Justice with its own funding and independent administration. It states in its latest report, for 1993-1997, that there has been an increase of 15.85 per cent in the number of prisoners working in prison for private companies and public and private institutions, such as State governments, etc. In addition to such workers, there are also own-account workers producing handicraft items. Some prisoners subject to a special regime work in enterprises or businesses close to the prison; they go out to work during the day and return to sleep in the prison.

183. There has been a sharp increase in the number of education programmes in the past five years as a result of the agreements concluded between the prisons administration and secondary, mixed and university education institutions. All prisoners lacking primary education receive primary instruction. In 1997 a total of 11,700 prisoners took part in educational activities - a substantial increase over the 1995 total of 4,600. The National Coordination Office for Prison Programmes, through the INCE civil associations, provides education services in 21 prison establishments. Other education institutions operating programmes in prisons include: Rómulo Gallegos University, which runs farming programmes in the General Penitentiary of Venezuela; the National Open University, which offers courses in management and accounting; and Simón Rodríguez University, which offers in-house courses in the La Planta prison. The Salesian Ladies offer education courses at different levels in the INOF and the Los Teques women's prison.

184. The new Code of Criminal Procedure provides that release on parole may be authorized by the Court of Supervision provided that at least two thirds of the sentence has been served and there is a favourable forecast of the prisoner's future conduct (art. 492). Prisoners aged over 70 may also obtain release on parole after serving one third of their sentence (art. 493). In addition, parole is granted as a humanitarian measure when the prisoner is suffering from a serious or terminal illness, subject to prior medical certification (art. 494).

185. With regard to the treatment of juveniles, referred to in article 10, paragraphs 2 (b) and 3, of the Covenant, Venezuela has juvenile detention centres run by the National Minors' Institute. Only in exceptional cases are minors (aged under 18) housed in prisons for adults.

The serious prison problem in Venezuela

186. Serious acts of violence have been occurring in Venezuela's prisons for a long time, but more frequently in recent years, resulting in deaths, injuries, kidnappings, loss and destruction property, etc. There is no doubt that such incidents are due in part to the poor physical conditions in prisons, the defects of the prison management system, particularly in health, food and labour services, overcrowding, the law's delays, the lack of proper supervision, corruption, and drugs and arms trafficking, as well as to abuses on the part of managers, monitoring bodies, and internal and external security and custodial staff. In view of the increase in the number of such acts of violence, efforts have been made, in recent years in particular, to study and eliminate their causes. This is the reason for the programme of prison building and improvements, the reforms to speed up trial procedures and reduce the overcrowding, the improvement of the food and health services, the permanent presence of officials of the Public Prosecutor's Department, the issue of instructions, the training of prison personnel, etc.

187. Recent studies made by the Ministry of Justice show that although the dynamics of the violence in the various prison establishments vary according to the specific circumstances in each of them, most of the violence takes place in clashes and fights over the control, sale and use of weapons and drugs.

188. Most of the violence in Venezuela's prisons occurs in brawls when an armed gang or group bursts into an area occupied by a rival gang or group, taking the custodial staff by surprise or forcing them to retreat (for their own safety and that of the prisoners, staff members carry firearms only in very exceptional circumstances). Once inside a rival wing, the aggressors place padlocks or chains on the doors, lock up as many rivals or neutrals as possible and prevent the security staff from getting in while they beat up their victims.

189. The way in which the authorities and the security forces react depends on the magnitude and potential of the threat and on their legal and physical capacity to act. It is always difficult to control such emergency situations while still respecting human rights and avoiding the destruction of property and possessions. Once the situation has been brought under control the seizure and confiscation of arms and drugs begin, together with punishment of the ringleaders and other culprits, and transfers to other establishments; all this generates an atmosphere of tension which encourages complaints, mass protests, destruction of property, hunger strikes, and fresh threats of violence.

190. The innumerable prevention and security measures taken by the prison administration to deal with the violence include:

(a) In order to prevent more damage, it has been arranged for internal security personnel to carry only "non-offensive" weapons, i.e. to be equipped with devices and to use tactics similar to the ones used in the early stages of

the suppression of street riots, such as visored helmets and shields, protective jackets, masks, shotguns firing plastic pellets, etc.;

(b) The prisons administration has taken special care to control drug abuse and trafficking, for it is aware that this is a universal phenomenon which has a very adverse effect on discipline and order in prisons and undermines the rehabilitation programmes. In order to identify and catch the traffickers and their accomplices in the act of bringing drugs into prison precincts, the Ministry of Justice has devised a preventive search and control programme, which extends the search regulations to the bodies, clothing and other personal effects of persons requesting to enter the precincts of a prison as visitors, and especially of those visitors and officials who are suspected of being traffickers or carriers. As part of this policy and in order to prevent abuses and protests about the treatment of visitors by control and supervisory personnel, the Ministry of Justice has produced instructions regulating in detail the procedures for monitoring of visitors in accordance with the legal rules and always with respect for their human dignity;

(c) A national prison disarmament campaign has also been launched. The confiscation of weapons and other prohibited items found in the possession of prisoners reduces the potential for violence and helps to maintain order. Joint activities have been programmed as part of this campaign by the Ministry of Justice and the country's armed forces, whose agents carry out joint operations without warning - in order to prevent any leaks of information - and without unnecessary preparations or mass deployment of men, seeking effectiveness rather than a showy effect;

(d) Reaction by prison personnel to the urgent demands of inmates in the form of "assistance programmes" has been the most effective means of reducing the protests and easing the always harsh conditions of prison life. These programmes include psychological, legal-aid, social-assistance, chaplaincy, sports, and education services.

Article 11

190. Article 60 (7) of the Constitution provides that no one may be deprived of his liberty for not complying with an obligation when such non-compliance has not been defined by law as a crime or misdemeanour.

192. There is no imprisonment for debt in Venezuela or for non-fulfilment of contractual obligations, for it has been established that these are not criminal offences. Contractual obligations are enforced by civil or commercial remedies, depending on the case; and it is only when a punishable offence is involved, such as fraudulent bankruptcy, swindling and other types of fraud, that the criminal law is applicable; the criminal law is never applied as result of debt but only when a crime is alleged or proved.

193. According to the relevant provisions of the Civil Code (arts. 1,167 and 1,264), a debtor may not be sentenced to deprivation of liberty, for in the event of non-compliance with an obligation he will be liable only for losses and damages; and the creditor must assert his claim by the ordinary procedure in the civil courts.

194. There have been no cases of the violation of this principle since the entry into force of the present Constitution in 1961.

Article 12

195. Article 64 of the Constitution is consistent with this article of the Covenant, for it states:

> "Everyone may travel freely throughout the national territory, change his domicile or residence, leave and return to the Republic, and bring his property into the country or take it out, with no limitations other than those established by law. Venezuelans may enter the country without the need for any authorization. No act of the public authorities may banish Venezuelans from the national territory, except as commutation of some other penalty and at the request of the person sentenced thereto".

196. According to the Constitution, the right to travel freely may be restricted only in the event of suspension of guarantees. Such a restriction has been introduced on an exceptional basis on several occasions in the present decade, as reported above in the information on the application of and compliance with article 4 of the Covenant.

197. In practice, the violation of this right has been very exceptional in recent decades. One case was the action taken by the State security police (DISIP) in November 1997, when it arrested a number of Cuban nationals and Venezuelan nationals of Cuban origin and "expelled" them from Isla Santa Margarita. These persons, most of them residents of the country's capital, Caracas, had gone to Margarita to hold a press conference and deliver to the communications media a release denouncing violations of human rights in Cuba, taking advantage of the circumstance that the Cuban President, Fidel Castro, was to arrive in Margarita that same week to attend the seventh Ibero-American Summit of Heads of State and Government. This obvious political ploy was widely reported in the media and brought to the attention of the public. There were protests both by the victims and by various public figures and public and private institutions in Venezuela. The Minister in charge of the Office of the President personally repudiated the action taken by the security forces. A few hours later, in view of the widespread protests, the measure was rescinded and the victims were allowed to return and complete their business on Margarita.

198. The law stipulates two requirements for the commutation of sentences under the constitutional rule cited above: the commutation must be of a sentence of deprivation of liberty and intended to benefit the guilty party. Articles 54-56 of the Criminal Code authorize the Criminal Chamber of the Supreme Court of Justice to commute a sentence of imprisonment to confinement to some place in the national territory once two thirds of the sentenced have been served.

199. For political crimes and related military crimes there is also the Commutation (Pardon and Banishment) Act of 15 December 1964, which empowers the National Executive, at the prisoner's request and without the requirement of his serving a specific proportion of his sentence, to replace the sentence by banishment from the national territory, but only for a period equal to or shorter than the remaining part of the sentence. This Act, which was adopted in

1964 as a means of securing peace at a time when there were still hotbeds of guerrilla insurrection in the country, fell into disuse three decades ago.

Article 13

200. Article 45 of the Constitution states: "Foreigners have the same rights and duties as Venezuelans, subject to the limitations and exceptions established in this Constitution and by law". And article 52 goes on to state: "Both Venezuelans and foreigners must comply with and obey the Constitution and the laws, decrees, resolutions and orders issued by legitimate agencies of the public Power in the exercise of their functions".

201. The institution of political asylum was incorporated in the Constitution, which states in article 116: "The Republic grants asylum to any person who is subject to persecution or finds himself in danger for political reasons, in accordance with the conditions and requirements established by law and the rules of international law". On the basis of this constitutional provision and in consideration of the political situation in many of the countries of the Americas in the period 1960-1980, Venezuela opened its doors to many political exiles fleeing persecution by the dictatorships in their countries of origin and the violence of civil wars.

202. Venezuela is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which establishes the general principle of "non-refoulement" and of course requires States parties not to expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of torture. This principle is of course established in international customary law, as well as in article 33 of the 1951 Convention relating to the Status of Refugees, to which Venezuela is also a party. The Human Rights Committee, when explaining and establishing the general scope of and drafting guidelines for periodic reports by States parties under article 7 of the Covenant, says that "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement". This position of the Committee is shared by the Venezuela State.

203. There has been no change in the rule established in article 47 of the Aliens Act to the effect that no recourse shall be admissible against measures taken by the authorities to prevent the entry into the national territory of an alien who cannot be legally admitted or against an order for his immediate departure if he has already entered the country. This rule does not conflict with either the letter or the spirit of article 13 of the Covenant, which refers to "[a]n alien lawfully in the territory of a State party".

204. Section 5 (arts. 35-46) and section 6 (arts. 47-53) of the Aliens Act establish clearly both the grounds for expulsion and the procedure for admission and expulsion of foreigners. These provisions, despite the fact that the Act is a relatively old one for dealing with such changeable matters (it came into force into 1937), may be regarded as normal for a modern society (see annex 28 for the text of the Act).

Article 14

205. The right of all the country's inhabitants to equality before any authority, including the courts and tribunals of justice, is established in article 61 of the Constitution:

> "Discrimination based on race, sex, beliefs or social status shall not be permitted.
>
> Identification documents for civil acts shall contain no statement relating to filiation.
>
> No official form of address other than "citizen" (ciudadano) and "you" (usted) shall be used, except in diplomatic forms of address.
>
> Titles of nobility and hereditary distinctions shall not be recognized".

206. The right of all persons to a public hearing with due guarantees before a competent and impartial court is established in article 68 of the Constitution:

> "Everyone may utilize the agencies of the administration of justice in order to protect his rights and interests, under the terms and conditions established by law, which shall fix rules that ensure the exercise of this right by persons who do not have sufficient means to do so".

207. In this connection the law provides for free justice in the following language: "The benefit of free justice may be requested by any of the parties at any stage or grade of the proceedings, and such interlocutory matters shall be heard separately" (art. 176 of the Code of Civil Procedure). In a similar way, in criminal cases the Judiciary Act provides for the institution of public defence counsel; for juveniles there are the minors' attorneys; in labour matters, the Labour Procurator; and in agrarian matters, the Agrarian Procurator.

Natural judges and competent courts

208. Article 7 of the new Code of Criminal Procedure states: "Everyone shall be tried by his natural judges, and therefor no one may be tried or sentenced by ad hoc judges or courts. The authority to apply the law in criminal cases rests exclusively with the ordinary or special courts and tribunals established by law prior to the commission of the acts in question".

209. The Supreme Court of Justice exercises jurisdictional control over these matters. In March 1993 the Court declared unconstitutional several extraordinary judicial proceedings before the military courts, proceedings ordered by the National Executive following the attempted coups d'état in 1992 and conducted in violation of the right to be tried by one's natural judges. The Court then ordered the cases to be re-tried before the appropriate natural judges (see annex 29, decision of the Court).

Immunities and privileges

210. There are exceptions to the general principle of equality before any authority, including the courts and tribunals. These exceptions do not entail any discrimination but are designed to accord the maximum possible protection for persons holding public office. These exceptions take the form of immunities and prerogatives.

211. Immunity is the privilege by which a person is protected temporarily against the consequences of a criminal act for the duration of the immunity. A typical example of this privilege is the one contained in article 143 of the Constitution.

> "Senators and deputies shall be entitled to immunity from the date on which they are declared elected until 20 days after the end of their term of office or their resignation, and consequently they may not be arrested, detained, confined, or be subjected to criminal trial, searches of their person or home, or restrained in the performance of their functions.
>
> In the event of a serious offence committed flagrantly by a senator or deputy, the competent authority shall hold him in custody at his residence and shall immediately notify the relevant Chamber or the Delegated Committee, with a duly substantiated report. This measure shall cease to have effect unless within a period of 96 hours the Chamber in question or the Delegated Committee authorizes its continuation until a decision is taken to rescind the measure.
>
> Public officials or employees who violate the immunity of senators and deputies shall incur criminal liability and shall be punished in accordance with the law".

The immunity of members of parliament is a safeguard protecting them in the performance of their functions against control by the executive authorities.

212. Prerogative is a privilege accorded by law to certain persons. It consists of the granting of procedural guarantees providing for additional formalities in criminal proceedings brought against such persons. This is the situation addressed by Article 215 (1) and (2) of the Constitution, which provides for preliminary proceedings for a ruling on the merits by the Supreme Court of Justice before an action may be brought against the President of the Republic or a person acting in his stead, members of the Congress or of the Court itself, or the Attorney-General, Prosecutor-General or Comptroller-General of the Republic.

"Nudo hecho" (laying an information)

213. Before actions may be brought against public officials in Venezuela there is a general requirement, subject to certain exceptions, for the completion of special procedural formalities, constituting guarantees or conditions of admissibility, as a consequence of the responsibility borne by public officials and of the need to safeguard the dignity of the State and the impartiality of judicial proceedings. The existence of these special procedures for persons

performing public functions does not constitute a set of privileges or immunity against the application of the criminal law. Their purpose is to protect the civil service and civil servants and to prevent trouble arising from hasty, unjustified or malicious accusations or denunciations designed to disrupt the legal order. It was for these reasons that the Legislature decided that criminal proceedings against public officials for offences committed in the performance of their duties and by reason of their office must be subject to certain special procedures or requirements. In fact the Code of Criminal Procedure establishes a special procedure: by denunciation by a member of the Public Prosecutor's Department; by accusation by a private individual; or automatically in the exceptional cases established by law. Certain formalities are required, such as the prior examination by a judge of the grounds and the documents supporting the criminal charge against the public official; this constitutes what the law calls the "nudo hecho" procedure.

214. This procedure, which without doubt constitutes a safeguard against hasty denunciations and actions, especially against law enforcement officials and members of the police and security forces in particular, has presented a serious obstacle in many cases to the effective follow-up of reports of police abuses.

Guarantee of public hearings

215. Venezuela's legislation and practice with respect to the guarantee of public hearings in court are fully in line with the provisions of Article 14, paragraph 1, of the Covenant. The Code of Criminal Procedure does in fact state that hearings shall be public but that "when owing to the nature of the offence the disclosure of the facts at a public hearing may be offensive the court, of its own accord or at the request of the representative of the Public Prosecutor's Department, may rule that the hearing shall be held in secret". Article 24 of the Code of Civil Procedure provides that "the records of the proceedings shall be made public, but the hearing shall be behind closed doors if the court so rules for reasons of public decency, depending on the nature of the case..."

216. On this same question of public hearings article 7 of the Minors' Protection Act stipulates that proceedings brought under the Act shall be in secret, for they must always be regarded as strictly confidential and restricted and their content may not be disclosed in any way even when the minor reaches his majority or dies. The proceedings and records of the case may be disclosed only to parents, guardians, carers and their proxies, as well as to minors' attorneys and representatives of the National Children's Institute and to any person who in the opinion of the court proves a legitimate interest. The court or the National Children's Institute, for judicial and administrative proceedings respectively, may give access to the records to accredited institutions carrying out scientific research, provided that they keep the information confidential.

217. The new Code of Criminal Procedure (which enters into force in July 1999) establishes the general rules for public and oral proceedings in articles 335, 336 and 340: the hearing shall be conducted in the uninterrupted presence of the judges and the parties; it shall be public (subject to the exceptions established by law); it shall be conducted orally; and the court shall not admit written submissions during the public hearing.

Paragraph 2

Presumption of innocence

218. Although not expressly provided for in the Constitution or by law, the presumption of innocence is one of the guiding principles of Venezuela's criminal system. This principle is incorporated in positive law by the self-executing nature of the international human rights rule.

219. Despite the increasing legal and administrative controls on the conduct of law enforcement officials, this principle of the presumption of innocence is still frequently violated by the police. For example, in many cases persons are held merely "on suspicion" without in fact their detention being "essential for the investigation of the facts and the prosecution of the perpetrators", as required by the last paragraph of article 60 (1) of the Constitution.

220. The principle is also violated when the police, having arrested a person "on suspicion", make his name public without further proof and describe him as the "assumed culprit".

221. Article 8 of the new Code of Criminal Procedure establishes the principle of the presumption of innocence: "Any person alleged to have committed a punishable act shall have the right to be presumed innocent and to be treated as such until his guilt has been established in a final sentence".

222. Articles 42 and 43 of the current Code of Criminal Procedure stipulate that the conviction and sentencing of the accused shall require full proof both of the corpus delicti and of his guilt, thus incorporating in law the principle of in dubio pro reo and obliging the court to acquit the accused if there is any doubt of his guilt.

Paragraph 3

(a) Right of the accused to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him

223. Article 60 (1) of the Constitution establishes that the accused shall be entitled to the protection of the pre-trial safeguards as soon as the arrest warrant is executed. Section 5 goes on to state: "Nobody may be convicted in a criminal trial without first having been personally informed of the charges and heard in the manner prescribed by law".

224. Article 226 of the Code of Criminal Procedure provides that the accused must appear in court in person, at a public hearing and free of any pressure or coercion and with representatives of the Public Prosecutor's Department, the defence counsel and the person laying the charge, if any, in attendance, and that the charges and other details of the case shall then be read out.

(b) Right of the accused to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing

225. The right to defence is embodied in article 68 of the Constitution, paragraph 2 of which states: "Defence is an inviolable right at every stage of a trial". In turn, article 195 of the Code of Criminal Procedure provides that when making his statement during the pre-trial proceedings the accused shall be assisted by a provisional counsel appointed within the preceding 24 hours. Once this stage has been completed, the judge must inform the accused through the clerk of the court that he should appoint a defence counsel within the next 24 hours. The accused may accept the provisional appointee as his counsel or designate one or more counsel to represent him in the actual trial (art. 209). Both these articles stipulate that if the accused does not appoint a counsel, the court shall itself appoint a public defence counsel to represent the accused during the hearing.

226. The presence of a provisional counsel during the pre-trial proceedings is designed to ensure that they are conducted properly. The counsel may recommend to his client what he should do for the purposes of his defence, and the accused is always the first to make a statement during these proceedings. Once the pre-trial proceedings are completed, and immediately after the appointment of one or more defence counsel, the judge must summon him or them to take a legal oath that they will faithfully discharge their duties. On the third day after the accused has been provided with defence counsel the representative of the Public Prosecutor's Department and the person laying the charge, if any, may submit, in cases in which a public action lies, a formal document setting out the charges against the accused, or what is properly called the indictment (art. 218). In private actions, i.e. in cases in which only the injured party may initiate the proceedings (art. 102), the person laying the charge must explain his accusation. Once the indictment has been presented, the court sets a time for the third direct hearing to try the accused in open court. If the accused is not under arrest he is summoned to the hearing. At this hearing the accused may request release on bail by the court if the charges so allow.

227. The Narcotic Drugs and Psychotropic Substances Act accords detainees or persons charged with the commission of an offence punishable by law the right to be assisted by a counsel of their choosing when they make a statement during the preliminary proceedings before an examining magistrate. Infringement of this right entails the nullity of the whole proceedings and the resubmission of the case, which must be ordered automatically by the examining magistrate.

(c) Right of the accused to be tried without undue delay

228. A series of legal provisions has been adopted in an attempt to solve the serious problem of the law's delays in Venezuela.

229. The Public Prosecutor's Department Act lists as one of the functions of this institution "to ensure the prompt and proper administration of justice and the correct application of the law by the courts of the Republic in criminal cases and in cases involving matters of public order and decency" (art. 6 (4) of the Act).

230. Article 202 of the Code of Civil Procedure stipulates that the established time limits or periods may not be extended or recommenced once they have expired, except in the cases expressly specified by law or when a cause not attributable to the party requesting the extension or recommencement so dictates. And article 251 states: "The pronouncement of the sentence may be deferred only once, on serious grounds which the judge shall mention specifically in the deferment order, and for a period not exceeding 30 days. A sentence pronounced outside the period of deferment shall be notified to the parties; otherwise the period for the lodging of appeals shall not begin to run". Article 19 of the Code states: "A judge who refrains from ruling on the grounds of the law's silence, contradiction or deficiency or of the obscurity or ambiguity of its language, or who unlawfully delays making a ruling shall be indicted for denial of justice".

231. Article 42 (7) of the Judicial Personnel Act provides that judges may be cautioned if they allow unjustified delays or negligence in the handling of cases or completion of any related formality. Sections 7 and 9 of article 43 state that judges may be suspended for the following reasons: when they do not meticulously comply with the legal time limits and periods to which they are subject by law or defer sentencing without due cause, or when they refrain from ruling on the grounds of the law's silence, contradiction or deficiency or of the obscurity or ambiguity of its language, or when they unlawfully delay ordering any measure or handing down any ruling, decree, decision or sentence, even if no application for enforcement of civil liability or no criminal action alleging a denial of justice has been filed on these grounds.

232. Article 44 of the Act states: "Without prejudice to any criminal sanctions, judges shall be removed from their posts on the grounds, inter alia, of repeated failure to comply with the legal time limits and periods or repeated deferment of sentencing..."

233. Despite these legal provisions, the Council of the Judiciary has found it necessary to sanction judges for delay and for denial of justice. The Council's Disciplinary Panel has been receiving complaints of unnecessary delays and denials of justice and has applied the corresponding sanctions, including dismissal.

234. New courts have also been created for this same purpose of overcoming the problem of judicial delays.

235. The Council has continued its efforts to improve court premises in the various judicial districts. In addition, pursuant to the power conferred by article 15-Q of the Act by which it is governed, the Council created the institution of itinerant criminal judges, numbering 50, who have travelled the whole country to try cases and reduce the overload of the courts of the Republic. In 1996 alone these itinerant judges issued 3,275 decisions, broken down as follows: convictions - 2,011, acquittals - 636, dismissals - 506, resubmissions - 116, and rejections of jurisdiction - 6.

236. In addition, in order to reduce the overload in the civil courts the Council created the institution of executing judges or officers for the executive or preventive purposes envisaged in the Code of Civil Procedure, in accordance with article 15-R of the Act.

237. The Council has continued its efforts to improve court premises in conjunction with the Ministry of Urban Development and the regional governments, and it has initiated a programme for the construction of court buildings. Recent years have seen the opening of new courts of justice in the States of Zulia, Carabobo, Nueva Esparta, and Cojedes. Work has also begun on the building of courts of justice in several other regions. This has entailed the provision of furniture and equipment and increases in the operational budgets of the courts. A programme for the provision of electronic equipment for automatization has also been initiated.

(d) Right of the accused to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it

238. Article 60 (5) of the Constitution states: "Persons accused of an offence against the State may be tried in absentia, with the guarantees and in the manner prescribed by law"; Venezuela therefore had to enter a reservation when ratifying the Covenant with respect to the right of the accused to be tried in his presence. Venezuela maintains this reservation.

239. In its explanatory commentary to the draft constitution of Venezuela the Constituent Assembly justified the provision for trial in absentia as follows: "After formulating the principle that no one may be convicted in a criminal trial withour first having been personally notified of the charges and heard in the manner prescribed by law, it was deemed necessary to state that persons accused of an offence against the State may be tried in their absence, with the guarantees and in the manner prescribed by law. This solves a serious problem of ordinary law in connection with acts of utmost gravity, for which the existing system based on constitutional rules drafted in absolute language did not offer an adequate solution..."

240. The trial in absentia referred to in the Safeguarding of the Public Heritage Protection Act does not violate the guarantees of due process, as was explained in the second periodic report (paras. 221-225). Article 92 states: "If, 10 days after the issue of the detention order, the suspect has not been arrested, the court shall automatically appoint a provisional defence counsel for him", i.e. the court appoints a defence counsel so that the absent suspect may exercise all proper remedies against the measures ordered in his case. The essential purpose of this procedure is to prevent the ordering of criminal proceedings in the prosecution of this type of offence. The explanatory commentary to the Act states that this procedure "... seeks to provide a mechanism for protecting the economic interests and the morals of the civil service; in other words it is a legal instrument for conducting the fight against those acts which attack the integrity of the heritage of the State and the probity of the civil service..."

241. The purpose of Venezuela's Legislature in establishing this exception to the right of the accused to be tried in his presence was to prevent such cases from coming to a standstill. As explained above, a counsel is appointed for the accused, and this counsel takes charge of the defence and invokes and exercises

the remedies provided by law. The counsel is appointed by the court on its own motion, freely and without prompting, pursuant to the powers accorded to it by law. It is assumed that the "absentee" could hardly authorize lawyers to represent him in the case, because if he voluntarily removed himself from the place of the trial and therefore from the legal measures ordered by the court, he would hardly wish to represented by appointees.

(e) Right of the accused to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him

242. This right is fully guaranteed in Venezuelan law. Article 170 of the Code of Criminal Procedure provides that the necessary questions must be put to a witness to clarify his statements and the manner in which he knows or came to know the facts which he asserts. Article 26 establishes the same principles with respect to cross-examination.

243. There are no prohibitions or requirements imposed on the manner of questioning witnesses in cross-examination; the questioner is therefore free and unrestricted, but he may not go to extremes; if he does, the judge must protect the witness. Witnesses must give their evidence without prompting, and then questions may be put to them to supplement, clarify or explain anything which is incomplete or unclear, but in no case may a questioner seek to confuse a witness in his answers.

244. The Code makes no distinctions between witnesses - for the prosecution or the defence - or with respect to questioning and cross-examination, so that a witness may always be cross-examined by the other party.

(f) Right of the accused to have the free assistance of an interpreter if he cannot understand or speak the language used in court

245. Article 17 of the Code of Criminal Procedure states: "Persons who do not know Spanish and are called upon to give evidence shall be assisted by one or more interpreters who, in the absence of official interpreters, shall be selected and sworn by the court before commencing their duties".

(g) Right of the accused not to be compelled to testify against himself or to confess guilt

246. This right is guaranteed by article 60 (4) of the Constitution and by article 193 of the Code of Criminal Procedure, which provide that at the time when the accused makes his statement in answer to the charges - and he must always be heard in person - he shall be informed of the offence with which he is charged, and the constitutional rule guaranteeing the right "not to be compelled to swear an oath or to confess his own guilt or the guilt of his spouse or his relatives within the fourth degree of consanguinity or second degree of affinity" shall be read out to him.

Paragraph 4

247. The procedure applicable to minors is contained in the Minors' Protection Act. The basic purpose of this Act is to protect the interests of minors by

establishing their right to live under conditions which facilitate their normal biological, mental, moral and social development.

248. The Act stipulates that the State must provide the necessary means and conditions, inter alia, to protect minors by means of special laws and other measures and by special courts, to prevent their being treated as criminals and to ensure therefore that they do not suffer harm as a result of the illegal acts which they commit: juvenile offenders must undergo re-educational measures and treatment.

249. For children in irregular situations the juvenile courts may order protection measures in open or closed institutions. A special procedure is applied in all cases, including a study of the child's personality and of the circumstances surrounding his act, with a view to instituting the protection or treatment measures best suited to the characteristics of each child or adolescent receiving assistance.

250. Juvenile justice is dispensed by the higher juvenile courts and the juvenile courts of first instance. In judicial districts where there are no juvenile courts, juvenile cases are heard by the ordinary courts of first instance. Juvenile criminal justice is thus dispensed by juvenile courts. According to article 86 of the Minors' Protection Act, juvenile offenders are minors who engage in any act punishable by law or under by-laws. Such juvenile offenders are not regarded as criminals and cannot therefore receive criminal sentences: they must instead undergo re-educational measures and treatment (art. 1 (6) of the Act).

251. The Children's Council of Venezuela was created in 1936; it was transformed in 1978 into the National Children's Institute (INAM), an agency of the National Executive responsible for providing special protection and care for minors accused of violating the law or whose participation in criminal acts has been proved. INAM currently has 54 diagnosis and treatment centres, located in all the federal entities of the country, which cater for an annual average of 19,517 adolescents undergoing re-education measures in closed institutions. These centres are staffed by interdisciplinary teams responsible for devising the psycho-social treatment needed by the children and their families and for promoting the children's social reintegration; to this end they take educational and therapeutic measures and measures to improve the children's social and family environment.

252. In addition, since 1995 INAM has been working to secure a basic change in the Minors' Protection Act in order to a bring its content into line with the provisions of the Convention on the Rights of the Child and other international agreements signed and ratified by Venezuela and to differentiate procedures for the protection of children and adolescents victims of violations of their rights from the special-protection procedures, measures and rules required for minors who break the criminal law. In the case of criminal offences the amendment to the Act seeks to introduce legislation to guarantee minors the right to due process and a fair trial, with the same prerogatives as are accorded by law to citizens over the age of 18. The National Executive has already sent to the Congress of the Republic a bill on the protection of children and adolescents, which introduces an integrated protection system.

253. The juvenile courts order minors in irregular situations to be taken to a rehabilitation centre, where their histories and living conditions are examined and assessed.

254. All police investigation procedures involving children under the age of 18 must be attended by a minors' attorney, who is responsible for ensuring the application of the laws and measures for the protection of minors. Minors' attorneys are appointed by the Attorney-General of the Republic and report to him.

255. Article 73 of the new Code of Criminal Procedure (which enters into force on 1 July 1999) states: "When it appears in connection with the commission of a punishable act that one of the participants cannot be prosecuted because he is a minor, the case against him shall be heard by the courts specified in the special legislation; such courts may order the transfer of the proceedings to the competent court".

256. Venezuela ratified the Convention on the Rights of the Child on 13 September 1990.

Paragraph 5

257. The right to appeal to a higher court is established in article 50 of the Code of Criminal Procedure: "Any final judgement in first instance may be appealed within five sitting days following notification of the judgement to the defendant if he is in custody, or to his counsel if he is not, and the appeal shall be heard in both cases".

258. The higher judicial authority must be consulted in cases where a criminal sentence is imposed, regardless of whether an appeal is lodged. Article 51 of the Code states: "Whether or not an appeal is lodged, any acquittal or conviction in the first instance shall be the subject of consultation with the higher judicial authority within the same period and in the same circumstances as apply to appeals ...", but if the sentence is a fine or a term of imprisonment of less than one year, the sentence is final and not subject to appeal.

259. The new Code of Criminal Procedure devotes the whole of title III of Book Four to the subject of appeals (arts. 439-450), title IV to the remedy of judicial review of criminal convictions (arts. 451-462), and title V to the review of sentence (arts. 463-472).

Paragraph 6

260. A final sentence may be reviewed, giving the guilty party or his heirs, or the Public Prosecutor's Department, an opportunity to request its annulment, in accordance with article 56 of the Code of Criminal Procedure, in the following cases: (a) if two persons have been convicted of the same offence by two judgements which cannot be reconciled and which are evidence of the innocence of one or other of them; (b) if a criminal conviction has been pronounced on the basis of evidence of the homicide of a person who is conclusively proved to have been alive after the time of his assumed death; and (c) if the principal evidence on which the conviction was based is a document subsequently proved to be a forgery.

261. Article 59 of the Code states: "The setting aside of a criminal conviction while the sentence is being served shall terminate the sentence. Application may also be made for annulment of criminal sentences already served, even when the person concerned has died. It will then be the responsibility of his heirs to apply for the annulment".

262. A pardon may be either a full pardon or commutation of the sentence. A full pardon entails unconditional release and terminates the sentence and all its legal consequences. Commutation means that a heavy sentence is replaced by a lighter one, with the relevant legal consequences.

263. There is also the possibility of a procedural pardon, which is a most important innovation, for it is designed to compensate for excessive procedural delays, in accordance with article 7 (a) and (b) of the Bail Act. This pardon is a power accorded by the Constitution to the President of the Republic (art. 190 (21)) in accordance with article 104 of the Criminal Code, without prejudice to the jurisdictional procedures envisaged in article 312 (2) of the Code of Criminal Procedure, by means of which the judge in the case orders the dismissal of the case against a person who has been pardoned. In 1997 alone five procedural pardons were granted on the basic grounds of the delays in the criminal proceedings against the beneficiaries.

264. The new Code of Criminal Procedure provides for compensation for charged or convicted persons. The following are the relevant provisions:

> "Article 284: When following a review of his sentence a convicted person is acquitted, he shall be compensated for the time spent in detention. Any fine, or the excess amount of a fine, shall be repaid with the monetary adjustments required according to the relevant rates of the Central Bank of Venezuela.
>
> Article 285: The court ordering the revision which gives rise to the compensation shall fix the amount of the compensation by awarding one day's basic salary of a judge of first instance for each day of imprisonment or security measure. The fixing of the amount of compensation shall not prevent a person claiming a higher amount from seeking it in the competent courts by the appropriate means.
>
> Article 286: Such compensation shall also be paid when the offence is declared not to exist or not to be of a criminal nature or when the participation of the accused is not proven and he has suffered deprivation of liberty during the proceedings".

Paragraph 7

265. The principle of non bis in idem is established in article 60 (8) of the Constitution, which states: "No one may be tried for the same acts in respect of which he has been previously tried".

266. According to article 228 (3) of the current Code of Criminal Procedure, res judicata constitutes grounds for a plea of inadmissibility.

267. In civil proceedings article 346 (9) of chapter III of the Code, on "Prior issues", treats res judicata as a prior issue which the respondent may raise instead of contesting the merits of the claim against him.

Article 15

268. The principle of nullum crimen, nulla poena sine lege is established both in the Constitution of Venezuela and in its criminal law. Article 60 (2) of the Constitution states: "No one may be deprived of his liberty for failing to fulfil obligations when such failure has not been defined by law as a crime or misdemeanour"; and article 1 of the Criminal Code states: "No one shall be punished for an act which has not been expressly declared punishable by law, nor shall he be subject to penalties which have not been previously established".

269. Both the criminal law and the Constitution establish the principle of the non-retroactivity of the criminal law except when it favours the accused. Article 2 of the Criminal Code states that "criminal laws shall have retroactive effect to the extent that they favour the accused, even if at the time of their enactment a final sentence has already been passed and the convicted person is serving the sentence". And article 44 of the Constitution states: "No legislative provision shall have retroactive effect except when it imposes a lesser penalty. Procedural laws shall apply from the time when they enter into force, even in cases which are being heard; but in criminal trials evidence already introduced, insofar as it is beneficial to the defendant, shall be weighed in accordance with the law in force at the time when the trial began".

270. It is not only the constitutional provisions and the legislation which are consistent with article 15 of the Covenant. The jurisprudence and practice of the courts is in strict accordance with the principles derived from this article's letter and spirit.

Article 16

271. The juridical personality of all the inhabitants of the Republic is expressly recognized by law. Article 16 of the Civil Code states: "All individuals of the human species are natural persons". And article 43 of the Constitution states as a general rule with respect to personality: "Everyone has the right to free development of his personality, with no limitations other than those deriving from the rights of others and from the public and social order".

272. In general terms, under Venezuelan law the juridical personality of human beings begins at birth. However, for certain legal purposes account is taken of the person to be born, both when such person is conceived and when he is to be conceived. Article 17 of the Civil Code states in this connection: "The foetus shall be deemed to have been born in matters concerning its good; for the foetus to be deemed a person it is sufficient that it should have been born live". The intent of the law in stating that the foetus "shall be deemed to have been born in matters concerning its good" is to favour it in the acquisition of rights or the improvement of its juridical status. The assimilation of a foetus to a born child is subject to the condition that it is in fact later born live, regardless of whether it is viable.

273. Venezuelan law also addresses the person from before his conception, but only for the very limited purposes specified in the Civil Code, which relate essentially to questions of succession.

274. Venezuela is a party to the American Convention on Human Rights, which of course recognizes the right to life "from the moment of conception".

275. The juridical personality of a human being is extinguished at death.

Article 17

276. Article 63 of the Constitution states: "Correspondence in all its forms is inviolable. Letters, telegrams, private papers and any other means of correspondence may not be seized except by judicial authority, subject to the fulfilment of the legal formalities and always maintaining secrecy with respect to domestic and private affairs unrelated to the proceedings in question. Books, receipts and accounting documents may be inspected and audited only by the competent authorities, in conformity with the law".

277. Paragraph 307 of the second periodic report restated what Venezuela understands by "arbitrary or unlawful interference" with correspondence, citing for this purpose articles 186, 187, 188 and 189 of the Criminal Code, which have to do with offences of violation of secrecy.

278. The exercise of the right not to be subjected to arbitrary or unlawful interference in private matters encounters its main obstacle in the advance of modern techniques for intercepting information and the use of such information for all manner of purposes, from blackmail to criminal or political investigations. It was precisely to address these problems that Venezuela promulgated on 28 November 1991 the Protection of Privacy (Communications) Act (see annex 30).

Protection of Privacy (Communications) Act

279. This Act is designed to protect privacy, confidentiality and the inviolability and secrecy of communications between two or more persons.

280. It addresses two main matters:

Firstly, it defines the offences and establishes penalties of imprisonment in the following cases:

(a) A term of imprisonment of between three and five years is imposed on anyone who arbitrarily, clandestinely or fraudulently records or acquires knowledge of a communication between other persons or interrupts or obstructs such communications; the same penalty is imposed, except when the act constitutes a more serious offence, on anyone who discloses the content of such communications in whole or in part by any means of information;

(b) A term of imprisonment of between three and five years is imposed on anyone who, without authorization in accordance with the law, installs apparatus or instruments in order to record or obstruct communications between other persons;

(c) A term of imprisonment of between three and five years is imposed on anyone who seeks to obtain a benefit for himself or for another person by damaging or forging a communication or altering its content;

(d) A term of imprisonment of between six and 30 months is imposed on anyone who disturbs another person's peace by using information obtained by methods prohibited by law and creates states of anxiety, uncertainty, fear or terror;

Secondly, the Act establishes exceptions and special procedures to facilitate investigations carried out by the security agencies of the State:

(a) The police authorities, as auxiliaries of the administration of justice, may obstruct, interrupt, intercept or record communications solely for the purposes of the investigation of the following punishable acts: offences against the security and independence of the State; offences specified in the Public Heritage Protection Act; offences specified in the Narcotic Drugs and Psychotropic Substances Act; and offences of kidnapping and extortion;

(b) In the cases mentioned in paragraph (a) the police authorities, as auxiliaries of the administration of justice, must apply, with a statement of grounds, to the criminal court of first instance having jurisdiction in the place where the action will be carried out for the corresponding authorization, and they must state expressly the duration of the action, which may not exceed 30 days; successive extensions may be authorized by the same procedure and for the same duration; places, means and other relevant details. The court must immediately notify these proceedings to the Public Prosecutor's Department;

(c) By way of exception, in cases of extreme necessity and urgency the police may act without prior judicial authorization but must immediately notify the criminal court of first instance of the action taken, attaching a statement of the grounds to such notification for the purpose of obtaining the corresponding authorization, within a time limit of eight hours;

(d) In the event of non-compliance with the established procedure, the intervention, recording or interception is unlawful and may not be used as evidence in any way, and the persons responsible are liable to a term of imprisonment of between three and five years;

(e) Any recording authorized in accordance with the Act may be used only by the police or judicial personnel responsible for the investigation and prosecution of the case; such persons are therefore prohibited from disclosing the information obtained;

(f) Any official who violates the prohibition on disclosure of the information obtained is liable to a term of imprisonment of between three and five years, increased by two thirds;

(g) Actions for prosecution of the offences defined in the Act are brought by accusation filed by the injured parties, but proceedings are instituted automatically if the alleged culprit is or was at the time of the interception a public official or employee, or an official or employee of the telephone services or of the State police or security forces.

281. Articles 233-236 of the new Code of Criminal Procedure deal with this issue in the following terms:

"Article 233: During the investigation of a criminal act the Public Prosecutor's Department, with the authorization of the supervising magistrate, may order the criminal investigation police to seize correspondence or other documents assumed to have originated from the perpetrator of the act or addressed to him which may have some connection with the facts under investigation. It may also order the seizure of documents, deeds and securities, and sums of money held in bank accounts or safe deposits or by third parties, when there are justified grounds for concluding that they have some connection with the criminal act under investigation.

Article 234: It may also order, in accordance with the law, the interception or recording of conversations by telephone and other electronic means of communication, whose content is to be transcribed and used in the proceedings. The original sources of the recording shall be kept, measures having been taken to ensure that they cannot be tampered with and can subsequently be identified.

Article 235: In the cases indicated in the preceding article the Public Prosecutor's Department may reasonably request the supervising magistrate of the place where the investigation is taking place for the necessary authorization, which shall state expressly the duration of the action, which may not exceed 30 days. Successive extensions may be granted by the same procedure and for the same duration, places, means and other details. By way of exception, in cases of extreme necessity and urgency the Public Prosecutor's Department may act without prior judicial authorization but must notify such action within a time limit of eight hours in a document containing a statement of the grounds, which shall be attached to the request.

Article 236: Any recording authorized in accordance with the provisions of this Code or of special legislation shall be for the exclusive use of the authorities responsible for the investigation and the prosecution; therefore the information obtained shall not be disclosed".

Obligations under article 14 of the American Convention on Human Rights: the right of correction and reply

282. Venezuela is a party to the American Convention on Human Rights. Article 14 of the Convention deals with the right of correction and reply in the following terms:

"1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

2. The correction or reply shall not in any case remit other legal liabilities that may have been incurred.

3. For the effective protection of honour and reputation, every publisher, and every newspaper, motion picture, radio, and television company, shall have a person responsible who is not protected by immunities or special privileges".

283. With regard to the incorporation of these rules in domestic legislation, attention is drawn to the reply given in this report in connection with article 2 (paras. 11-21 above) to the effect that it is acknowledged that the international human rights treaties ratified by Venezuela are self-executing laws. Therefore, although this matter is not addressed in other Venezuelan laws, the right of correction and reply exists for Venezuelans by the sole fact of having been embodied in the American Convention on Human Rights.

284. With respect to the interpretation of the last sentence of paragraph 1 of article 14 of the Convention, Venezuela regards as correct the interpretation given by the Inter-American Court of Human Rights in its advisory opinion OC-7/86 of 29 August 1986 to the effect that the full exercise of this right does not require that the rule in question should be developed in domestic regulations.

Article 18

285. The right to freedom of thought, conscience and religion is respected in law and in practice in Venezuela.

Freedom of thought

286. As pointed out in the second periodic report (CCPR/C/37/Add.14, para. 413), Venezuela considers that freedom of thought is a right which does not have to be guaranteed through legal means because thought is not expressed and not subject to coercion; and expressed thought falls within the scope of the freedom of expression and opinion, a right established in article 66 of the Constitution.

287. Up to the 1940s the Constitution prohibited in Venezuela "communist and anarchist doctrines". This prohibition was used in practice mainly to persecute political opponents. When later, in the 1960s, the Communist Party of Venezuela was involved with the support of foreign Governments in the armed struggle against the democratic system it was outlawed - not for purposes of ideological persecution but because of the conduct of its leaders and their involvement in subversive activities. Today all trends of political ideology operate freely in the life of the nation without any restrictions other than those imposed by law.

Freedom of conscience and religion

288. The following are the fundamental provisions of Venezuela law on this subject:

(a) The Constitution, which states:

"Article 65: Everyone has the right to profess his religious faith and to practice his religion privately or publicly, provided it is not contrary to the public order or to good customs.

Religious faiths shall be subject to the supreme supervision of the National Executive, in conformity with the law.

No one may invoke religious beliefs or his religious conscience in order to avoid complying with the law or to prevent another person from exercising his rights".

(b) The Criminal Code, Chapter II of which is entitled "Offences against the freedom of religion", states:

"Article 168: Any one who, in order to insult any religion which is or is being legally established in the Republic, obstructs or disturbs the conduct of religious functions or rites shall be sentenced to a term of imprisonment of between five and 15 days.

If the act is accompanied by threats, violence, insults or expressions of contempt, the penalty shall be a term of imprisonment of between 45 days and 10 months.

Article 170: Anyone who, in order to insult a religion which is or is being legally established in the Republic, destroys, mutilates or damages in any way, in a public place, things intended for use in such religion, and anyone who attacks or vilifies one of its ministers, shall be sentenced to imprisonment for between 15 days and 10 months.

When such an offence is committed against a minister of religion in the exercise of his functions or by reason of his functions, the penalty fixed for the offence shall be increased by one sixth.

Article 171: Any one who in places of religious observance or in cemeteries damages, spoils or defaces monuments, paintings, statues, tablets or graves shall be sentenced to a term of imprisonment of between one and six months or to a fine of between 150 and 1,500 bolívares".

289. This freedom is not manifest only in the laws and practices of the State; religious tolerance is in fact deeply rooted in the culture of Venezuelans. Generally speaking there is a profound respect for the religious beliefs of others, and this has created an environment of harmonious coexistence. The various religions seek their own space in social life, accepting that others may impart a different religious message. In any event, in legal matters, in conformity with the constitutional and legal rules, the guarantee of religious tolerance is a duty of the State towards the citizens and of the citizens towards each other.

290. By reason of Venezuela's history and other factors of a geographical, cultural and sociological nature, Catholicism is the numerically dominant religion; this circumstance explains and justifies a broader range of relations between the State and the Catholic Church but it does not imply any special privilege or protection which might give the impression of discrimination against other religions. There is no State religion, but there is an agreement between the State and the Holy See (modus vivendi). There is also a Missions Act, which regulates the activities of the Catholic Church in certain areas of the country, particularly in areas with a preponderantly indigenous population

291. In order to illustrate to the Committee the neutral position of the State towards the various religious faiths, we would cite the example of official educational establishments. They have no paid staff providing religious instruction, and those establishments in which the Church offers its services to provide such instruction always respect the liberties of the students and their parents, so that attendance at religious instruction is not obligatory for all students. The freedom of religion is thus upheld.

292. However, given the historical and sociological circumstances mentioned above and on the basis of the agreement between the State and the Holy See, the Government allocates some budgetary assistance to the Catholic Church; this assistance is called "ecclesiastical allocations for the proper maintenance of bishops, vicars general and ecclesiastical chapters"; there is also an allocation to help with work on the building and preservation of churches. In addition, under a 1969 Presidential Decree budgetary resources are allocated for the maintenance of retired cardinals, archbishops and bishops.

293. In recent decades there have been only three cases in which the State has been obliged to intervene in religious affairs. One was the case of the Tradition, Family and Property group, which was brought to the Committee's attention in the second periodic report (paras. 324-327). Another was the case of the New Tribes Association, which was mentioned in paragraph 328. More recently (in 1997) the State found it necessary to take some political decisions when the courts, once the police investigations into the activities of the "Colonia" sect had been completed, ruled that that sect, rather than practising a form of religious activity, was undermining the unity of the family. Of course the family, in the words of article 74 of the Constitution, is "the fundamental nucleus of society" as well as, in the words of article 21 of the Venezuelan Organic Criminal and Investigation Code, of society.

294. On the basis of the provision of the Constitution that "religious faiths shall be subject to the supreme inspection of the National Executive", the State has issued a religious bill establishing rules on the entry of foreign personnel, the practice of religious and public rites, the training of ministers of religion, the requirements for operating in Venezuela, etc. (see annex 31).

Article 19

295. The right of freedom of expression has been respected and guaranteed in Venezuela's legal system and practice for four decades of uninterrupted democratic life. Article 66 of the Constitution states:

> "Everyone has the right to express his thoughts by the spoken word or in writing and to make use of any means of dissemination, without prior censorship, but statements which constitute offences are subject to punishment according to law".

296. This provision of the Constitution is in conformity with the provisions of article 19 of the Covenant and applies to all the rights embodied therein, as well as to the legal limitations which may reasonably be imposed on such rights. Its application in practice has been the continuous norm of the democratic Venezuelan State. Some of the jurisprudence of the courts in this matter has

already been brought to the Committee's attention in paragraph 132 of the second periodic report.

297. The right of freedom of expression, as envisaged in the law and enjoyed in practice, covers the following points in Venezuela:

(a) The right freely to express one's thoughts, including the right not to be interfered with on account of one's opinions, and to have access to information;

(b) The right to use any means of dissemination for these purposes;

(c) The prohibition of prior censorship.

298. Every possible means of communication is available and operates in Venezuela without any arbitrary limitations: printing (newspapers, magazines), audiovisual (several TV stations with national and regional coverage, radio stations, etc. The communications world has complete freedom, and there is extensive competition among communications enterprises. The State merely establishes the minimum controls needed to ensure respect for the views of others and for the public interest.

299. It should be noted that since Venezuela is a party to the American Convention on Human Rights the self-executing of such instruments automatically establishes in Venezuela the right of reply contained in article 14 of the Convention.

Article 20

300. Article 66 of the Constitution establishes the right of freedom of expression but it prohibits propaganda for war and statements which offend public morals or incite disobedience of the law.

301. Propaganda for war or incitement of war are characterized as crimes in the Criminal Code, Article 144 of which states that a sentence of imprisonment for between 12 and 24 years shall be imposed on any person "who foments civil war between the Union and its States or between the States". Perhaps because Venezuela has not been involved in any international war since the beginning of the nineteenth century, when it became independent of Spain, its legislation refers basically to "civil war" in connection with the prohibition of propaganda for war. However, this provision is interpreted as a general prohibition and characterization of the crime of "propaganda for war" in its general sense.

302. Article 146 of the Criminal Code defines the crime of incitement of insurrection and stipulates that a sentence of imprisonment for one to four years shall be imposed on "any person who commits an act, the purpose of which is to incite the population of the Republic to armed insurrection against the public authorities..." Article 164 of the Code provides for the imprisonment of any person who publicly incites to the offences of uprising, rebellion or insurrection for that act alone, i.e. regardless of whether the uprising, rebellion of insurrection actually takes place.

303. Venezuela's foreign policy has been characterized in recent decades by consistent and systematic contributions to the solution of international conflicts, most particularly conflicts affecting the Latin American region. For example, Venezuela was a participant in the Contadora Group in 1981, which promoted peace in Central America, in the Rio Group from 1986, in the democratization process in Haiti from 1991, in the Group of Friends which helped to resolve the internal conflicts in El Salvador and Guatemala, and more recently in the proposal for the establishment of a group of friends to facilitate the dialogue between the Government of Colombia and the guerrilla coordinator committee. All these examples testify to Venezuela's unshakeable will to promote peace. In these matters Venezuelan diplomacy has done no more than interpret the values, feelings and aspirations of the Venezuelan people.

304. Out of conviction, the mass communication media in Venezuela have never encouraged international war or the violent solution of internal problems.

National hatred

305. Nothing has changed in Venezuela with respect to the information given in the second periodic report. Veneruela is a country of immigration which throughout its history has welcomed and offered a homeland to immigrants from various continents, especially America and Europe.

306. As a result of the rising crime rate, the presence of very large numbers of illegal immigrants, the high unemployment rates, and the over-demand for public services, as well as the still-unresolved dispute with Colombia, there is a degree of prejudice and mistrust towards Colombians living in Venezuela, but this does not constitute a manifestation of national hatred. Colombians, even those who are without papers, coexist peacefully with Venezuelans at work and in their places of residence.

Race/Lineage

307. The legislation and the practice in this area are the same as described in the second periodic report. Since independence Venezuela has been a country of miscegenation. Most of its population is of mixed race. In addition to this majority, there are various other ethnic groups, which also coexist without differences of any kind. Attitudes of discrimination or racial hatred have never been recognized legally or manifested in practice.

Religious hatred

308. Even though most of the population is Catholic, there is full religious tolerance both culturally and in practice and in the relevant legislation.

309. The law protects religions legally established in the country. These standards are embodied in the Constitution, which prescribes social and legal equality without discrimination of any kind, and in the Criminal Code, which sanctions persons who insult any religion legally established in the country or its adherents.

310. The agencies of the State, the mass communication media, and in general terms all social organizations of the most varied types and purposes treat

adherents of all religions with proper respect. At no time have hostile messages been published to foment discrimination, hatred or violence against any religion or its adherents.

Article 21

311. The right of peaceful assembly is established in article 71 of the Constitution: "Everyone has the right to meet with others, publicly or privately without previous permission, for lawful ends and without arms. Meetings in public places shall be governed by law". Most of the regulations on this matter are contained in the Political Parties, Public Meetings and Gatherings Act of 23 March 1965.

312. This Act states that all the inhabitants of the Republic have a right to meet in public places or to gather together without any limitations other than those established by law. Private meetings are not subject to regulation by law.

313. Meetings may be public or private. Private meetings are ones held behind closed doors (in private homes, social clubs, etc.) when admission is by invitation or summons. Public meetings are ones held in public places such as streets, squares, theatres and open public spaces in general. The defining feature of a public meeting is that anybody may attend.

314. The question which must be asked about the right embodied in article 21 relates to the restrictions which may be established by law in a democratic society to safeguard national security, public safety and public order or to protect health or public morals or the rights and freedoms of others. Since the Committee has not yet made a general comment on this article, it is necessary to refer in this reply to the interpretation of the text of the Venezuelan Constitution and to the relevant doctrine and jurisprudence. It is thus possible to point to a number of guidelines for the exercise of the freedom of public assembly:

(a) The limitations imposed must be reasonable and uniform;

(b) The purpose of the meeting must be lawful, i.e. not in conflict with the Constitution or the law or with morals and good customs;

(c) Meetings must be orderly and not incite violence or degenerate into violence or threaten the public peace;

(d) Such meetings and gatherings may not be banned by reason of the ideas, opinions or doctrines of their organizers or participants;

(e) The rules on the duration of meetings, the routes of marches, the number of persons taking part, etc., may not be established arbitrarily but only on the basis of reasonable considerations, including the interest of the community.

315. In any event, the defining feature of lawful public meetings is not the building or location where they are held or the number of participants but rather their type or nature. For example, meetings held for unlawful purposes

or ends, even behind closed doors, may be interrupted or broken up by the authorities.

Basic rules on the holding of public meetings contained in the Political Parties, Public Meetings and Gatherings Act

316. The organizers of public meetings or gatherings must give at least 24 hours' notice to the civil authority of the judicial district and state the elected place or route, date, time and general purpose of the event. The authorities are required to publish periodically a list of locations where public meetings or gatherings may not be held.

317. When there are justified grounds for fearing that the holding of simultaneous meetings in the same locality may disturb public order, the authority to which notification must be given may decide, in agreement with the organizers, that the events should be held in places sufficiently far apart or at different times.

318. The authorities must ensure the orderly conduct of public meetings. Any one who interrupts, disrupts or seeks in any way to impede or obstruct the holding of a public meeting is liable to imprisonment.

319. Public meetings or gatherings of a political nature at which the participants wear uniforms are banned.

320. The authorities are empowered to disperse crowds seeking to obstruct the normal conduct of meetings of deliberative, political, judicial or administrative bodies and crowds seeking to foment disorder or obstruct the free flow of traffic.

321. There are also regulations on the activities of members of the forces of law and order in connection with public meetings and gatherings. Such activities must be fundamentally passive and limited to the maintenance of order in three respects: (a) between the participants; (b) protection of the participants against interference or obstruction by third parties; and (c) protection of the general public against disorder caused by individuals attending a meeting or gathering. The forces of law and order must not for any reason become involved in discussion of the ideas or expression of the opinions which are the object of the meeting or gathering.

Article 22

322. The right to freedom of association in its various forms is established in the Constitution:

(a) Article 70: "Everyone has the right of association for lawful ends, in conformity with the law";

(b) Article 72: "The State shall protect associations, corporate bodies, societies and communities that have as their purpose the better fulfilment of the aims of human beings and of social life, and shall promote the organization of cooperatives and other institutions devoted to the improvement of the public economy";

(c) With regard to the right to form trade unions, article 91 states: "Unions of workers or employers shall not be subject to any other requirements as to their existence and operation, than those established by law for the purpose of ensuring a better accomplishment of their own functions and guaranteeing the rights of their members. The law shall specifically protect in their employment the organizers and leaders of labour unions during the time and under the conditions required for guaranteeing trade union freedoms".

323. As these constitutional provisions show, the State does not merely recognize and require respect for the right of association; it also assumes to itself the duty of protecting the various forms of association that may be created within the existing legal framework.

324. With regard specifically to the right to form and join trade unions, it is apparent that article 91 of the Constitution covers several competing issues:

(a) The right to form trade unions, subject only to the requirements established by law in order to "ensure a better accomplishment of their own functions and guaranteeing the rights of their members";

(b) The right of autonomy in the management of the trade union organization's own activities; its operations may be restricted only by law but must comply strictly with the purposes indicated;

(c) Protection is accorded to the organizers and leaders of trade union organizations.

325. Article 397 of the new Labour Act of 13 June 1997 states that "the right of association is an inviolable right of workers and employers. Unions, federations and confederations of workers or employers shall enjoy autonomy and the specific protection of the State in the pursuit of their purposes".

326. Title VII of the Labour Act, especially chapter II thereof (arts. 400-468), describes in detail the right of free association in unions accorded to workers and employers.

327. In addition to unions of workers or employers, the State guarantees and protects a vast range of other professional associations and organizations (of doctors, engineers, lawyers, economists, internationalists, sociologists, educators, etc.), as well as community, consumers, producers, neighbourhood, etc., associations.

328. Under Venezuela's Civil Code lawful private associations, corporations and foundations may be accorded judicial personality, subject to fulfilment of certain formalities, and thus acquire rights and duties. The right to form such associations is entirely unrestricted, provided that they do not infringe article 6 of the Civil Code, which provides that "laws whose observance affects public order or good customs may not be waived or relaxed by private agreements".

329. Venezuela has a long tradition of the creation and proper operation of civil associations. In the event of the commission of an act infringing the

right of association, the persons affected have remedies such as constitutional amparo, as well as administrative means, which offer them prompt protection.

Article 23

183. The Constitution defines the obligations of the State with respect to the family:

(a) The State must protect the family as the fundamental nucleus of society and ensure the improvement of its moral and economic situation. The law must protect marriage, promote the organization of unattachable family assets, and take action to help all families to obtain comfortable and hygienic housing (art. 75);

(b) Motherhood must be protected, regardless of the civil status of the mother. The necessary measures must be enacted to ensure the full protection of every child, without discrimination of any kind, from his conception until he is fully developed, under favourable material and moral conditions (art. 74);

(c) The law must make whatever provision is necessary to help every child, regardless of his filiation, to know who his parents are, so that they may fulfil their duty to care for, feed and educate their children and so that children and young people may be protected against neglect, exploitation and abuse. The support and protection of minors must be addressed in specific legislation and dealt with by special agencies and courts (art. 75).

184. These provisions of the Constitution have been developed in separate instruments, including in particular the Minors' Protection Act and the Civil Code. In addition to having domestic legislation to protect the family, Venezuela is a party to international agreements dealing with this matter: the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, ILO Conventions Nos. 103 and 138, etc.

Measures to assist and protect the family

185. The obligations of the State in respect of assisting and protecting the family are established both in the Constitution and in other laws of the Republic. Various national and regional agencies of the public administration are responsible in practice for carrying out the programmes in question.

186. The Ministry of the Family has a number of standing programmes: protection, promotion and support of breastfeeding; prevention of early pregnancies; care for pregnant adolescents; family counselling and sex-advice centres in various parts of the country; and multi-purpose and day-care centres. The Ministry also prepares local plans for providing services for children.

187. The Ministry discharges these duties directly and through its affiliated agencies:

(i) The National Children's Institute (INAM);

(ii) The National Sports Institute (IND);

(iii) The Gran Mariscal de Ayacucho Foundation (FUNDAYACUCHO);

(iv) The Foundation for the Youth Orchestra of Venezuela;

(v) The Cooperation Fund for the Financing of Cooperative Enterprises (FONCOFIN);

(vi) The Social Administration School Foundation;

(vii) The Foundation for the Maintenance of the Sports Infrastructure (FUMIDE);

(viii) The Social Investment Fund (FONVIS);

(ix) The Foundation for Community Development and Municipal Promotion (FUNDACOMUN);

(x) The Youth And Change Foundation;

(xi) The National Council for the Integration of the Disabled;

(xii) The Social Consolidation Fund.

335. The Ministry also coordinates the permanent secretariat of the Council for the Supervision of the Comprehensive Care of Workers' Children, as well as providing the permanent secretariat of the National Commission on the Prevention of Early Pregnancy, the National Commission on Breastfeeding, and the National Commission on Monitoring the Social Protection Component of the Venezuelan Agenda.

336. In addition, the Ministry is responsible for the National Autonomous Service for the Comprehensive Care of Children and the Family (SENIFA), it also supervises the Coordination and Implementation Office for the Youth Work Training Programme (CCEP) and the Technical Coordination Office for the Social Development Programme, which is currently being carried out in Venezuela with the financial support of the World Bank and the Inter-American Development Bank.

337. The Ministry of Education runs several family assistance and protection programmes, such as school meals (food supplement), family subsidies, and preschool care in rural areas.

338. The Ministry of Health and Social Assistance operates the following programmes: mother and child food (PAMI), antenatal and postnatal care; perinatal care; infant and child mental health; family medicine; and child medicine.

339. The National Children's Institute (INAM) is the agency of the National Executive responsible for coordinating, in conjunction with other public bodies, the policies for the development of children and the family by means of suitable education, assistance, legal and social measures. It implements the child protection policy and is the principal technical authority in matters falling within its competence. It is responsible for the organization of protection measures for neglected children, intervention in situations which infringe the

rights of children and adolescents, and the development of prevention, protection and treatment programmes for children and adolescents who are neglected or at risk and for those who break the law. To this end it carries out a number of family protection and assistance measures, especially for families with children. Its activities and programmes cover the following areas: family education and counselling, promotion of community organization; sports, culture and recreation; care for children and adolescents who are neglected and/or at risk by means of fostering or adoption; training; and protection of children and adolescents against exploitation and ill-treatment in their social environment. For the maintenance of these activities INAM has an extensive network of 688 affiliated institutions and services and 76 private organizations which collaborate with INAM under joint management agreements. Further details will be found in Venezuela's report to the Committee on the Rights of the Child (see annex 12).

144. INAM operates other programmes as well:

(a) Fostering: children who have lost or lack the support of their families are offered a substitute home, which protects them and provides them with the necessary opportunities for their full development;

(b) Adoption: the aim is to provide children declared to be neglected with a family to furnish them with emotional and material stability, subject to prior completion of the legal and other requirements;

(c) Casas Cuna: the aim is to protect and provide comprehensive care for children aged between eight months and three years from poor homes whose mothers work outside the home;

(d) Kindergartens: the aim is to protect and furnish comprehensive care for children aged three to eight, again from poor homes with mothers working outside the home;

(e) Child assistance: the aim is to prevent neglect and social and personal risks among children and adolescents and to provide care where needed;

(f) Community homes: these centres provide out-of-school training and social protection for children aged seven to 12 who have working mothers or are exposed to the risk of family break-up;

(g) Since 1996 INAM has been operating a programme of community care centres which offer psychological, legal, cultural and recreational counselling to consolidate family units and prevent situations which infringe the basic rights of children. This programme is currently running in 184 establishments in the poorest areas throughout the country; it has specialized personnel trained to care for children and their families; since 1996 INAM has been extending this programme in the towns and has already signed 48 agreements with town halls throughout the country.

145. Venezuela has other public bodies, separate from the National Executive, which perform family protection and assistance functions.

342. The Office of the Attorney-General of the Republic has a family and children's section responsible for ensuring respect for the constitutional rights and guarantees and for enforcing the laws on family protection and assistance. Its work with families is concerned basically with problems between spouses, annulment of marriages, acknowledgement of children, and maintenance.

343. In addition, much family protection and assistance work has been done in Venezuela by civil and professional organizations, including:

- The Venezuelan Association for Alternative Sex Education (AVESA);
- The Social Training and Studies Centre for Women (CISFEM);
- The Coordination Office of Women's NGOs (CONGM);
- The Centre for Women's Studies of the Central University (CEM-UCV);
- The Venezuelan Family Planning Association (PLAFAM);
- The "Girl-Mother" civil association;
- The ALEDO Foundation;
- The National Coordination Office of Children's NGOs;
- Women's circles;
- CENAF.

Maternity protection

Maternity is protected by law and in practice:

(a) If a mother works in the formal sector of the economy she enjoys all the rights accorded to workers in general and may not be subjected to any discrimination, pay differentials or different working conditions by reason of her status of mother;

(b) Pregnant women may not be employed in work requiring great physical effort or in work which for other reasons may affect the normal development of the foetus or cause abortion;

(c) The law prescribes, and this is the practice, that women shall cease work six weeks before delivery, subject to the submission of the corresponding medical certificate. Women receive their pay during this period and for six weeks after delivery, or for a longer period if medical opinion so requires. Pregnant women may not be moved from their jobs during pregnancy or for one year following delivery;

(d) Maternity is protected regardless of the woman's civil status;

(e) Enterprises employing more than 20 female workers are required to maintain a nursery where mothers may leave their children during the working

day. Female workers are entitled to two extra half-hour rest breaks a day for breastfeeding their children. If there is no nursery, both these breaks are of one hour's duration;

(f) In view of the large numbers of adolescent mothers, who may not be able to provide their children with the necessary care and material and psychological stability, the State established in 1992 a special programme to prevent early pregnancies. This programme is administered by the Commission on the Prevention of Early Pregnancy (CONAPEP), which is responsible for devising, coordinating and implementing all the relevant activities of the various public and private bodies in order to deal with the problem of early pregnancy. The programme is justified by the fact that Venezuela has the highest early pregnancy rate of the Andean countries (in 1993, 24 per cent of male and 35 per cent of female adolescents stated that they had a child; two out of three (63 per cent) of women aged 15 to 24 had their first child before the age of 20).

144. The table below summarizes the Venezuela's family protection programmes.

Article 24

Paragraph 1

Constitution of the Republic

145. Article 73 of the Constitution establishes the protection of the family as the fundamental nucleus of society; article 74 accords full protection to all children from their conception until they are fully developed, under favourable material and moral conditions; and article 75 states that the law shall create mechanisms to enable every child, regardless of his filiation, to know who his parents are. This article also prescribes special treatment for minors from the standpoints of both legislation and jurisdiction. Article 78 establishes the right to education and the obligation of the State to ensure access to education by creating the necessary institutions; and Article 93 establishes special protection for child workers.

Convention on the Rights of the Child

146. Venezuela is a party to this Convention, which it ratified on 29 August 1990. Its provisions have been incorporated in current domestic positive law, which may be invoked before the judicial and administrative authorities.

ILO Convention No. 138

147. Venezuela ratified this Convention in January 1984. It is concerned with the elimination of child labour and prohibits work by children aged under 15. Of course it leaves open the possibility for countries with underdeveloped economies to opt for the age of 14 years, which by law and in practice is the lower limit in Venezuela. The ratification of the Convention had the effect of incorporating in Venezuelan legislation a ban on independent work by minors, since the Labour Act then in force and the Minors' Protection Act applied only to work for an employer.

Decree on the elimination of child labour (1995)

349. On the basis inter alia of ILO Convention No. 138 and in view of the fact that in September 1996 Venezuela signed a memorandum of understanding with ILO on the initiation in Venezuela of the International Programme on the Elimination of Child Labour (IPEC), on 13 August 1997 the President of the Republic decreed the creation of the National Commission on the Elimination of Child Labour and Protection of Child Workers as a permanent agency. This Commission is chaired by the First Lady of the Republic and draws its membership from the Ministries of Education, Health and Social Assistance, Labour, the Family, Youth, and Planning; it also has one member each from the Congress of the Republic, the National Children's Institute (INAM), and the most representative national workers' organization.

350. The Commission is responsible for:

(a) Preparing plans and proposals for the design of a national programme setting out the IPEC activities and areas of action in Venezuela;

(b) Taking cognizance of other plans and projects to eliminate this problem as part of a national policy to combat child labour implemented under the memorandum of understanding between Venezuela and ILO;

(c) Promoting and strengthening coordination among public and private, national and international bodies in the fight against this problem.

New Labour Act

351. This Act, which has been in force since June 1997, incorporates a number of changes and advances in the regulation of child labour.

352. There is a general ban on work by children aged under 14, but the National Executive may decree a higher minimum age for occupations and conditions when it judges that the interests of children so require.

353. Children are forbidden to work in mines and foundries, in work involving a risk to their life or health, and at tasks which are beyond their strength or impede or retard their physical or moral development. They are also banned from work which may harm their intellectual or moral training and from work in liquor stores.

354. The Act establishes rules on working hours, rest periods, night work (banned), equal remuneration, annual holidays, opportunities for attending school, etc.

Minors' Protection Act

355. The second periodic report summarized in paragraphs 402-405 the most important provisions of this Act relating to the rights embodied in article 24 of the Covenant.

356. In conjunction with other State agencies and in cooperation with NGOs, INAM has produced a proposal for the partial reform of the Act. The main

purpose of this proposal is to bring Venezuela's special legislation into line with the international commitments acquired by ratification of the Convention on the Rights of the Child. New legislation has been prepared in the form of a protection of children and adolescents bill (see annex 33); it has sections on the following topics:

(a) General principles of comprehensive care, and the rights and duties of children and adolescents;

(b) Protection of the family;

(c) Violation of the rights of children and adolescents;

(d) Children and adolescents who violate the rights of others;

(e) Arrangements by the State to provide comprehensive protection, and administration of special justice for children and adolescents;

(f) Misdemeanours and crimes against the rights of children and adolescents.

Measures adopted by the State in favour of children

Paragraph 2

Provisions of the Civil Code and their enforcement

157. The Civil Code establishes the normal procedure for the registration of births. Article 464 states that births must be declared to the first civil authority of the parish or municipality within 20 days of the delivery. Article 465 goes on to say that this declaration must be made by the father or mother in person or by special mandate of either of them, or failing that by the surgeon or midwife or by any other person present at the birth, or by the head of the household where the birth took place. A birth certificate is issued immediately following the declaration. Article 466 states that the birth certificate must indicate the sex and name of the newborn child, and if the person making the declaration does not give a name, the civil authority shall do so in the presence of such person.

158. The registry offices will enter in the civil register children born to Venezuelans or to foreigners holding documents in due order up to the child's third birthday, notwithstanding the time limit of 20 days. Nor does the law establish any sanction of nullity with respect to declarations or registrations made after the 20 days have elapsed, so that the rule contained in article 464 of the Code is technically ineffective. The registry offices have concluded that the refusal of registration after the time limit established by law would cause serious harm to the child. The time limit for registration has been extended by custom up to two or three years from the birth.

159. For the purposes of exercise of the right to a name and a nationality the National Certification Office accepts birth certificates of children entered in the civil register of births up to the age of nine, thus facilitating the issue of identity cards to all registered persons. This Office has devised a

procedure for guaranteeing the right to a name and a nationality of children not registered before their ninth birthday.

Minors' Protection Act and the achievements of INAM with respect to registration

360. Article 10 of this Act states that the State shall introduce measures for the acknowledgement of children and their timely entry in the civil register of births and shall ensure that the responsible parties make the registration; if they do not, the registration is made by INAM itself or by a minors' attorney, in accordance with the relevant legislation.

361. INAM has carried out mass campaigns for late civil registration in cooperation with other State agencies and NGOs. In 1995/1996 alone 13,412 children were registered. Ninety-four per cent of them were children of Venezuelan parents or of one Venezuelan parent and a foreign spouse whose documents were in order, and only the remaining six per cent were children born in Venezuela or abroad to foreigners whose status in Venezuela was unlawful.

Family Protection Act

362. Article 1 of this Act, which dates from 1961, states: "The declaration of a child and the declaration of his birth, when the birth takes place in a hospital, clinic, maternity unit or other similar establishment administered by the State or by a State agency or autonomous institute, may be made to the director of the establishment, who shall hand over one of the copies to the person making the declaration and remit the second as quickly as possible to the first civil authority of the parish or municipality in whose jurisdiction the birth took place, so that this authority may enter and certify the birth in the register; the third copy shall be kept in the establishment's files".

Children without documents

363. Despite these arrangements Venezuela has a large number of children without documents. The following causes of failure to register children have been identified:

(a) People are not sufficiently well informed about their duty to register their children in good time and about the advantages of doing so in terms of the children being able to exercise their civil rights;

(b) Poor knowledge of the relevant procedures and requirements;

(c) A number of obstacles and difficulties in using the service, outmoded procedures, lack of registry books, absence of officials responsible for entering the registration, etc.;

(d) Failure to apply the provisions of the Family Protection Act relating to births in hospitals, clinics and other public establishments;

(e) Irregular registrations resulting from failure to complete the established procedures or presentation of documents of doubtful accuracy and validity;

(f) Retention of the cards certifying the birth and the link with the mother and the levying of improper charges by assistance centres.

144. These problems have their negative consequences:

(a) There are increasing numbers of children without identification who run the risk of not being able to exercise their basic rights to education, health, social security, etc.;

(b) This situation encourages bad habits and irregular procedures and the emergence of corruption;

(c) The lack of identification documents encourages the crime of trafficking in children.

Paragraph 3

146. Article 35 of the Constitution deals with nationality, establishing that the following persons are Venezuelans:

(a) Persons born in the territory of the Republic;

(b) Persons born in foreign territory to a father and mother who are Venezuelan by birth;

(c) Persons born in foreign territory to a Venezuelan father by birth or a Venezuelan mother by birth, provided that such persons establish their residence in the territory of the Republic or declare their wish to acquire Venezuelan nationality;

(d) Persons born in foreign territory to a Venezuelan father by naturalization or a Venezuelan mother by naturalization, provided that such persons establish their residence in the territory of the Republic before the age of 18 years or declare their wish to acquire Venezuelan nationality before the age of 25 years.

147. As can be seen from these provisions of the Constitution, both *jus soli* and *jus sanguinis* exist in Venezuela.

Foreign children without documents

148. However, the registration of the nationality of children born to foreign parents present illegally in Venezuela has caused difficulties and debate, and a fair solution to the problem has still not been found. This issue stems from the dispute with Colombia, from the political crisis in Venezuela in the first half of the 1990s, and to some extent from the clash of differing rules of domestic law.

149. Presidential Decree No. 1911 of 24 October 1991 made it compulsory for officials (prefects and civil registry heads) to enter in the civil registers the birth of all the children declared to them, even if the parents, or one of them, are not Venezuelan or have no identity papers; it also required officials to issue identity cards to minors, even if they are not accompanied for this

procedure by their legal representatives or these representatives do not have the relevant identity papers. An application was made to the Supreme Court of Justice for annulment of Decree No. 1911 on the ground that its provisions, although designed to guarantee a right (of children to a nationality), were jeopardizing other rights by facilitating illegal trafficking in children and allowing foreigners without documents to infringe other legal rules.

369. The Decree was annulled on 26 November 1993 by Decree No. 3267 (published in issue No. 35,350 of the Gaceta Oficial de la República of 30 November 1993) and a Commission was appointed to study the legal, political and social implications of irregular immigration; it is chaired by the Minister for Internal Affairs and its other members are the Ministers for Foreign Affairs and for the Family and the Prosecutor-General of the Republic. The Commission was to report in 30 days.

370. The problem of children without papers has persisted. It is realized that children cannot be held responsible for the failure of the State to have an effective policy to control illegal immigration and that the situation is very grave, for there are already thousands of children born in Venezuelan territory to illegal immigrants without being declared to the civil registry. A decree has been drafted to solve the problem but it has not yet been approved by the Council of Ministers.

Article 25

Paragraph (a): right of every citizen to take part in the conduct of public affairs, directly or through freely chosen representatives

371. Article 3 of the Constitution states: "The Government of the Republic of Venezuela is and always shall be democratic, representative, responsible, and alternating". The condition of representativity implies the existence of public authorities elected by the people. Article 4 makes that point: "Sovereignty resides in the people, who exercise it, by means of suffrage, through the branches of the Public Power". And of course Venezuela periodically elects executive and legislative officials at various levels: President of the Republic; State governors and municipal mayors; senators and deputies to the Congress of the Republic; and members of local councils.

372. Since the restoration of public freedoms in 1958 Venezuelans have chosen their highest executive and legislative authorities by direct suffrage. Eight elections have been held at five-year intervals to chose the President of the Republic and the members of the two Chambers (senators and deputies) of the Congress of the Republic and the members of the legislative assemblies of the States. Since 1989 State governors, mayors, members of legislative assemblies, and local councillors have been elected for three-year terms.

373. In addition to direct participation in public affairs through the ballot box, article 114 of the Constitution accords to Venezuelans "the right to associate together in political parties in order to participate, by democratic methods, in the guidance of national policy". The right to associate together in political parties does not of course imply any limitation on the right to vote of citizens who are not members of a political party.

374. The Constitution and the law envisage for other forms of participation in public affairs:

(a) Referenda are provided for in the Constitution (art. 246 (4)) for the sole purpose of amending the Constitution ;

(b) Popular legislative initiatives by exercise of the right of a minimum of 25,000 voters identified in accordance with the law to submit draft legislation to the Congress of the Republic;

(c) Participation in the formulation of municipal policy and management: the citizens resident in a municipality may take part in policy formulation and management either directly through corporations or through associations or other types of organization. They are thus entitled not just to elect their mayor and councillors but also to express their views on such issues as votes of confidence, municipal referenda, initiatives for the creation of local bodies, requests for the reconsideration of local ordinances, open meetings of town councils, neighbourhood watches, and control of property.

375. Open meetings of councils, provided for in article 171 of the Municipalities Act, are a mechanism for direct popular participation. These open meetings consider matters of local interest tabled in writing by a minimum of 20 residents at least 15 days before the date of the meeting. The residents call on the president at petitions on which the meeting has been convened address the matter in question are heard, opinions expressed, and requests and proposals made. There is also the institution of the neighbourhood cooperative (art. 184 of the Act), by means of which residents participate by advising the standing committees of the council and by monitoring the proper functioning of public services. The political legitimacy of mayors is also controlled by means of votes of confidence (art. 88).

376. The control of municipally owned property is a mechanism by which residents may request the municipal council to declare void any agreements or contracts concluded with regard to municipal property in contravention of the provisions of the Act. Similarly, any resident, even acting individually, may request the Public Prosecutor's Department to intervene when municipal or communal land has been improperly alienated.

377. The Act also provides for the participation of local citizens in initiatives for the establishment, merger and elimination of municipalities and for the establishment of municipal districts. They may also, either themselves or through their neighbourhood organizations, use the mechanism of the local legislative initiative (art. 174) or the reconsideration of local ordinances (arts. 178-179).

378. The local referendum is another mechanism of popular participation and control of the legislative legitimacy of municipal and metropolitan councils. Petitions for the holding of referenda must be made by at least 10 per cent of the residents registered with the electoral board having jurisdiction over the place in question.

379. Municipal authorities are elected by all the persons residing within the jurisdiction of the municipality, not only Venezuelans but also foreigners with

more than 10 years' residence in the country and one year's residence in the municipality. The residence qualification is required not only for voting but also for standing as a candidate in mayoral or council elections or for becoming a member of a parish board, all in accordance with the Act.

Paragraph (b): right of every citizen to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors

380. Suffrage is regarded as a right which legitimizes and sustains the representative democratic system of government, as well as putting into practice the basic principle that sovereignty is vested in the people. Article 110 of the Constitution states this right in the following terms: "Voting is a right and a public duty. Its exercise shall be compulsory, within the limits and conditions established by law".

381. In Venezuela, according to the Constitution, voting is a duty as well as a right. But even though the law prescribes that voting shall be compulsory, in practice no sanctions are imposed on citizens who do not go to the voting stations to cast their votes. The legal prescription is interpreted as a moral obligation. In order to encourage participation the State, through the electoral bodies, carries out official campaigns to persuade people to vote in elections. The political parties, groups of electors and other civic organizations also engage in this kind of promotional activity.

382. The following are the main rules on elections established in the Constitution and by law:

383. First: voters must be Venezuelans aged over 18 and not subject to civil interdiction or political disqualification (art. 111 of the Constitution). Foreigners may vote in mayoral and council elections, subject to the same requirements as Venezuelans, provided that they have been resident in Venezuela for more than 10 years and in the municipality in question for at least one year (art. 10 of the Suffrage Act).

384. Second: voting is free and secret. This rule is embodied in the electoral legislation and applied in practice. Each voting station must have one or more booths where voters may cast their votes in secret; no one may accompany a voter when he is casting his vote, save in exceptional circumstances; the polling board must instruct voters about how to cast their votes and inform them that they are entitled to do so freely and that the secrecy of the ballot is guaranteed; and the board must always interpret the secrecy of the ballot in favour of the voter.

385. Third: suffrage is universal and direct for the election of the President of the Republic, senators and deputies to the National Congress, State governors, deputies to legislative assemblies, mayors, councillors, and members of parish boards. These provisions are contained in the Constitution (arts. 19, 148, 151 and 183) and the Suffrage Act (arts. 51, 53 and 71). Universal suffrage means that on the day of the election all persons entitled by law to vote may do so. A permanent electoral register is provided for by law (arts. 33

et seq. of the Act) and is kept in practice; all citizens entitled to vote have the right, and are required, to have their names entered in the register.

386. Suffrage is direct in the sense that voters cast their votes directly for the candidate of their choice from among the candidates standing for election. It is also direct in the sense that the act of voting is effected without the intermediation of any other person. The voter casts his vote personally and he may be accompanied when so doing only if he is blind or otherwise disabled (art. 116 (8) of the Act).

387. Some citizens are not entitled to vote, but this situation does not indicate any infringement of the principle of universality. Such citizens are minors under the age of 18, persons barred by a decision of a civil court, persons banned for commission of a crime, and foreigners; foreigners may however vote in municipal elections, subject to the conditions established by law.

388. These exceptions are consistent with what the Human Rights Committee says in its general comment on article 25. They exist for objective and cogent reasons.

389. Minors under the age of 18 are excluded from voting in almost all the countries of the world. The reason is that the electorate must have the mental capacity to grasp the importance of choosing its authorities and representatives. The age of 18 has been deemed a reasonable threshold for understanding and exercising these responsibilities.

390. The same reasons apply to persons barred by a court decision to the effect that they lack the mental capacity to take the decisions required for the exercise of their political rights. When such a ban is imposed, the person concerned loses the legal capacity to administer his property and to complete the formalities required for the exercise of his rights, including the right to vote.

391. Debarment by reason of a criminal conviction and loss of political rights by a decision of a criminal court are intended as accessory penalties. Article 24 of the Criminal Code states in this connection: "Loss of political rights shall not be imposed as the principal penalty but as an accessory penalty to a sentence of rigorous or ordinary imprisonment and it shall have the effect of removing the convict from any public or political posts or employment that he may hold and of debarring him, for the duration of his sentence, from obtaining any similar posts or employment and from exercising the active and passive right of suffrage". Of course, this loss of political rights ceases when the sentence has been served. This is how the law must be interpreted, as in the decision of the Federal Court of Appeal of 3 April 1982, in which the Court ruled: "Civil debarment and the loss of capacity to exercise any public function or political rights shall be suffered by the convict during his sentence but not after it".

392. Lastly, foreigners are excluded on the ground that voting implies direct participation in the political life of the State and in its administration and management. The exclusion of foreigners has no discriminatory purpose and is based on the reasonable premise that only nationals may possess all the political rights, particularly the rights connected with the election of their authorities. It should not be forgotten in this connection that Venezuela is

and always has been a country of immigration and that furthermore, by virtue of its geographical situation and for other reasons, it has suffered a serious problem of illegal immigration. Even with this restriction the Constitution and the law provide that foreigners may take part in the choice of local governments by voting in municipal elections, provided that they meet the requirements of the Suffrage Act and the Municipalities Act.

393. From the technical and administrative standpoint elections are conducted in Venezuela by an election-organization system which covers the whole territory of the Republic. This system is headed by the National Electoral Council, which is responsible for the overall management, organization and monitoring of elections and for the permanent electoral register, enjoying operational and administrative autonomy for these purposes. Every State and entity of the Republic has an electoral board, with subdivisions extending down to the polling boards (arts. 22 and 40 of the Suffrage Act). The membership of these bodies consists of leading independent figures and representatives of the political parties. The law stipulates that these electoral bodies must not be dominated by any political party or grouping, and the practice is consistent with the law.

394. The new Suffrage and Political Participation Act was promulgated on 30 December 1997 (see annex, special issue No. 5,200 of the Gaceta Oficial of 30 December 1997); this Act would regulate the elections scheduled for December 1998 to elect the President of the Republic, senators and deputies to the Congress of the Republic, State governors, deputies to the legislative assemblies of the States, mayors, and members of municipal councils and parish boards.

Paragraph 1: right of every citizen to have access, on general terms of equality, to public service in his country

395. The right to be elected is established in article 112 of the Constitution: "Voters aged over 21 who are able to read and write may be elected to and are fit to hold public office, subject to no restrictions other than those established in this Constitution and those derived from the aptitude requirements that apply to specific posts, as prescribed by law". Furthermore, article 11 of the Suffrage Act states: "The conditions for eligibility for election as President of the Republic, governor, and senator or deputy to the Congress of the Republic are those established by the Constitution of the Republic. The conditions applicable to mayors and members of municipal councils are those established by the Municipalities Act".

396. On the basis of these constitutional and legal provisions, the following are the conditions of eligibility for election:

(a) President of the Republic: Venezuelan by birth, aged over 30 and a layman (Constitution, art. 182);

(b) Senator: Venezuelan by birth and aged over 30 (art. 149);

(c) Deputy: Venezuelan By birth and aged over 21 (art. 152);

(d) State governor: Venezuelan by birth, aged over 30 and a layman (Election and Dismissal of State Governors Act, art. 6);

Titles of nobility and hereditary distinctions shall not be recognized."

401. Article 8 of the Civil Code also refers to the equality of all persons before the law: "The authority of the law extends to all nationals and foreigners present in the Republic".

402. A number of distinctions with respect to rights which existed in legislation and in practice in the past have gradually been disappearing, and the only remaining distinctions are based on reasons other than discrimination. For example, old differences in entitlements between men and women, or between Venezuelans and foreigners, have disappeared from legislation and practice. However, foreigners do not have all the political rights of Venezuelans, specifically the right to full participation in political life, to vote and to be elected. This is not interpreted or regarded as discrimination, for it is based on reasons of the national interest.

403. In addition to the International Covenant on Civil and Political Rights, Venezuela is a party to other international instruments of binding force in this respect: the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the International Convention against Apartheid in Sports; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Nationality of Married Women; the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (ILO Convention No. 100); the Convention concerning Discrimination in Respect of Employment and Occupation (ILO Convention No. 111); the Convention against Discrimination in Education (UNESCO); the American Convention on Human Rights, etc.

404. Equality before the law and the exercise of human rights by all citizens are not merely legal mandates in Venezuela. Egalitarian sentiments have penetrated deep into the social and political culture of Venezuelans. There are no discriminatory practices of any kind based on race, religion or national origin, and moreover there is a clear rejection of disparagement of or discrimination against other persons or groups. However, owing to the intensification of illegal immigration and the unfair competition for jobs which it generates, and the higher crime rates, recent years have seen the emergence of some popular feeling of mistrust and rejection of foreigners present in the country illegally.

Article 27

405. In accordance with article 27 of the Covenant and bearing in mind the content and scope of the Human Rights Committee's general comment 23, on minorities, approved at its fiftieth session in 1994, it can be asserted that the only minorities that exist as such in Venezuela are the indigenous groups living in the country's territory, particularly in forest and frontier regions.

406. According to the 1992 official indigenous census, Venezuela has 28 ethnic groups, each representing a culture and possessing its own identity, history, system of beliefs, socio-economic patterns, knowledge, values and language.

Those ethnic groups are classified into five big families according to linguistic affiliation: Caribe, Arawak, Independiente, Chibcha and Tupiguarani.

401. The country has 315,819 indigenous inhabitants, accounting for 1.5 per cent of the total population, and they are found in 10 federal States: 62.4 per cent in Zulia; 14 per cent in Amazonas; 11 per cent in Bolívar; 6.6 per cent in Delta Amacuro; 2.2 per cent in Anzoátegui; 1.9 per cent in Apure; 1.9 per cent in Sucre; 0.1 per cent in Monagas; and 0.22 per cent shared between Mérida and Trujillo.

402. Although the Constitution prescribes that legislation shall apply to "all" the inhabitants of the Republic, i.e. to all persons without discrimination of any kind, cultural differences are taken into account, for the benefit of the persons concerned, in the establishment of certain rights and freedoms. In practical terms, the rules on the treatment of indigenous minorities are scattered among different pieces of legislation, but they all have the same purpose of integrating and protecting these indigenous groups. The basic premise is that members of indigenous groups are entitled to their own specific culture and identity under the Constitution itself, which establishes the right to freedom of religion and conscience.

403. Article 9 of the Constitution stipulates that the official language of Venezuela is Spanish. However, indigenous groups are regulated by Decree No. 283 of 30 September 1979, which provides for the gradual introduction of bilingual education in indigenous schools. And the Education Act establishes the obligation of the State to give special attention to the indigenous population and the preservation of its ethnic and socio-cultural values. Accordingly, the Ministry of Education, through its Department of Indigenous Affairs and the Curriculum Division of the Sectoral Office for Planning and Budget, has been promoting the Bilingual Intercultural Education System (SEIB) in order to train citizens to communicate with each other in their own indigenous language at the same time as they are learning Spanish. The purpose is to encourage an interchange between their cultures and those of the rest of the country. This situation is characterized by respect, complementarity and the proper appreciation of culture.

404. Article 194 of the 1984 Narcotics and Psychotropic Substances Act states: "Certain small indigenous groups, clearly identified by the competent authorities, who have traditionally been consuming yopo in magical-religious ceremonies, are excluded from the application of this Act".

405. The special treatment of indigenous persons in prison is dealt with in the Prisons Regulations. This legislation prescribes special treatment for indigenous persons with respect to sleeping accommodation, work in workshops, visiting hours, etc. (see annex 34).

406. Environmental protection standards and legislation also contain specific provisions on the indigenous population. According to the Act approving the Amazon Cooperation Treaty of May 1980, signed by Venezuela and the other Amazon countries (Bolivia, Brazil, Colombia, Ecuador, Guyana, Surinam and Peru), "the contracting parties agree to conduct joint efforts and actions to promote the harmonious development of their respective territories in the Amazon, in order that such joint actions may produce equitable and mutually beneficial results,

as well as lead to the preservation of the environment and the conservation and rational utilization of natural resources". As pointed out above, this Amazon region is inhabited mainly by indigenous groups.

413. Article 67 of the Environment Act of 3 January 1992 establishes a special regime for indigenous groups:

> "Until the Act establishing an exceptional system for indigenous communities is passed, as prescribed by article 77 of the Constitution of the Republic, members of indigenous communities and ethnic groups shall be exempt from the penalties provided for in this Act when the acts specified herein occur in their traditional living places and are performed according to their traditional pattern of existence, occupation of land and coexistence with the environment ... Where necessary, the courts may order appropriate prevention measures to protect the environment and the harmonious relationship of indigenous communities with the environment."

In its sole paragraph this article also states:

> "In all matters connected with indigenous communities and ethnic groups the courts shall request a socio-anthropological report from the agency responsible for the indigenous policies of the State and shall take cognizance of the opinions of the indigenous community or ethnic group in question".

414. Where the health of indigenous groups in Venezuela is concerned, owing to cultural factors there is little information on morbidity and mortality, but some specific problems are known. Indigenous groups, especially the Guajiro and Warao communities, account for 75 per cent of the cases of cholera in Venezuela, and the rate is 1.4 times higher among indigenous groups than in the rest of the population. The living conditions of almost all the indigenous groups are precarious, with high rates of disease: diarrhoea, intestinal parasitosis, acute respiratory infections in childhood, etc. The infant mortality rate is high. In the 1980s, 74 per cent of the indigenous population did not have access to a doctor. The mandatory implementation of article 9 of the Medical Practice Act (establishing the rural medical service) has brought about some improvement in the provision of direct care by doctors for the country's indigenous groups.

REPORT ON CIVIL AND POLITICAL RIGHTS

VENEZUELA

List of annexes

1. Code of Criminal Procedure.

2. Labour Act.

3. Equal Opportunities for Women Act.

4. Act approving the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

5. Violence against women bill.

6. Decree No. 2722 of 22 December 1992 establishing CONAMU.

7. Central Administration Act.

8. Security and Defence Act.

9. National Armed Forces Act.

10. Code of Military Justice.

11. Amparo (Constitutional Rights and Guarantees) Act.

12. Suspension of guarantees, notification to States parties to the American Convention on Human Rights and to the International Covenant on Civil and Political Rights, February 1992.

13. Partial restitution of guarantees, notification to States parties, February 1992.

14. Total restitution of guarantees, notification, April 1992.

15. Acknowledgment by the Secretary-General of the United Nations of receipt of notifications from the Government of Venezuela, July 1992.

16. Temporary suspension of guarantees, Decrees Nos. 2668 (27 November 1992) and 2670 (29 November 1992).

17. Notification of temporary suspension of guarantees, November 1992.

17.1 Decree No. 2764 (16 January 1993) and notifications.

18. Decree No. 2765 (16 January 1993), total restitution of guarantees.

19. Notifications to the Secretaries-General of OAS and the United Nations on the total restitution of guarantees, January 1993.

20. Decree No. 241 (27 June 1994), notifications, and instructions of the Attorney-General on states of emergency, July 1994.

20.1 Decree No. 739 (6 July 1995) and notifications.

21. Environmental Offences Act.

22. Environment Act.

23. Venezuela's reply to the recommendations of the Special Rapporteur on torture.

24. Attorney-General's instructions on the prevention of arbitrary arrests.

25. Decision of the Supreme Court of Justice. Annulment of the Vagrancy Act, October 1997.

26. Instructions on intimate visits for prisoners issued by the Los Teques National Women's Counselling Institute, October 1997.

27. Los Pioneros prison newspaper.

28. Aliens Act.

29. Decision of the Supreme Court of Justice. Re-trial of cases.

30. Protection of Privacy (Communications) Act.

31. Religions bill.

32. Venezuela's report under the Convention on the Rights of the Child.*

33. Protection of children and adolescents bill.*

34. Prisons Regulations.**

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* Common annex to the reports on civil and political rights and on economic, social and cultural rights.

** Common annex to the reports on civil and political rights and on the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.